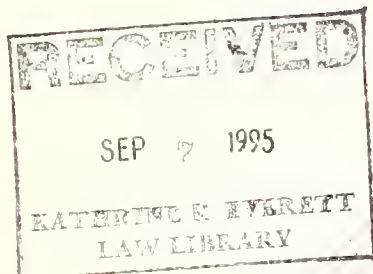


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NORTH CAROLINA REGISTER



VOLUME 10 • ISSUE 11 • Pages 889 - 980
September 1, 1995

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Contested Case Decisions

PUBLISHED BY

The Office of Administrative Hearings
Rules Division
PO Drawer 27447
Raleigh, NC 27611-7447
Telephone (919) 733-2678
Fax (919) 733-3462

INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the *Register*. The *Register* will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and twenty dollars (\$120.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards. The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

NORTH CAROLINA REGISTER

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Pages 889 - 980**

September 1, 1995

This issue contains documents officially filed
through August 18, 1995.

Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
PO Drawer 27447
Raleigh, NC 27611-7447
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
James R. Scarcella Sr., Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Teresa Kilpatrick, Editorial Assistant
Jean Shirley, Editorial Assistant

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(July 1995 - November 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95
10:13	10/02/95	09/11/95	09/18/95	10/17/95	11/01/95	11/20/95	01/01/96
10:14	10/16/95	09/25/95	10/02/95	10/31/95	11/15/95	11/20/95	01/01/96
10:15	11/01/95	10/11/95	10/18/95	11/16/95	12/01/95	12/20/95	02/01/96
10:16	11/15/95	10/24/95	10/31/95	11/30/95	12/15/95	12/20/95	02/01/96

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule below, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:GS:FHD:emr

DJ 166-012-3

95-1677

95-2232

August 2, 1995

Donald I. McRee, Jr., Esq.

County Attorney

P.O. Box 39

Elizabeth City, North Carolina 27907-0039

Dear Mr. McRee:

This refers to the polling place change for Pasquotank County (Precinct 4-B) and the polling place change for the City of Elizabeth City in Camden and Pasquotank Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 8, 1995.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Deval L. Patrick

Assistant Attorney General

Civil Rights Division

By:

Elizabeth Johnson

Acting Chief, Voting Section

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:)
The Proposed Assessment of additional sales and use tax)
for the period of April 1, 1988 through January 31, 1993)
assessed against Dialysis Care of North Carolina, Inc.)
)

ADMINISTRATIVE
DECISION NUMBER: 303

THIS MATTER was heard before the Tax Review Board on May 9, 1995 in the City of Raleigh, Wake County, North Carolina in the office of the State Treasurer. It involves the petition for review by Dialysis Care of North Carolina, Inc. (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on May 5, 1994 sustaining a proposed assessment of sales and use tax for the period of April 1, 1988 through January 31, 1993.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Jeff D. Batts, Attorney at Law participating. Hugh A. Wells, Chairman Utilities Commission was not present at the hearing.

The Taxpayer was represented at the hearing by George W. Rohe and R. Brantley Ferrell; Marilyn R. Mudge, Assistant Attorney General, appeared on behalf of the Department of Revenue.

After the hearing, the Board members present took the matter under advisement pursuant to G.S. §105-241.2(b1). Briefs were filed after the hearing on behalf of the Taxpayer and the Department of Revenue. On June 7, 1995, the Board reviewed the Petition, Briefs and record of the matter in the proceeding before the Assistant Secretary.

FINDINGS OF FACT

THE TAX REVIEW BOARD, having reviewed the Petition, Briefs and record filed in this matter, makes the following Findings of Fact:

1. Taxpayer operates health care facilities in North Carolina that provide kidney dialysis services to patients under the supervision and authorization of licensed, independent contractor physicians.
2. Taxpayer purchases from vendors medicines and drugs which are used in kidney dialysis care provided to patients.
3. Taxpayer has paid use tax on all medicines and drugs with the exception of Epogen.
4. Epogen is prescribed to kidney dialysis patients who suffer from nausea and dizziness as a result of the treatment even though the medicine is not necessary in performing the kidney dialysis services.
5. With respect to Epogen, the following transaction occurs:
 - a. Taxpayer charges the dialysis patients separately for Epogen that is issued pursuant to written instructions issued on "physician orders".
 - b. The "physician orders" are set forth separately on the patients' treatment records.
 - c. Charges for Epogen are separately identified on the patients' bills.

CONCLUSIONS OF LAW

Based upon the record, the Petition, Briefs and the foregoing findings of fact, the Tax Review Board concludes as

a matter of Law:

1. Pursuant to N.C.G.S. § 105-164.13(13), "medicines sold on prescription of physicians, dentist or veterinarians ..." are exempt from the retail sales and use tax.

2. N.C.G.S. § 105-164.3(15) defines "sale" to mean "any transfer of title or possession, or both, ..., in any manner or by any means whatsoever, however effected and by whatever name called, for a consideration paid or to be paid, ..."

DECISION

IT APPEARING TO THE BOARD, based upon the foregoing findings of fact and conclusions of law, that Taxpayer sold on prescription of a physician the drug Epogen to kidney dialysis patients. The sales of Epogen by Taxpayer are therefore exempt from sales or use tax pursuant to N.C.G.S. § 105-164.13(13).

IT IS THEREFORE ORDERED, that the Final Decision of the Assistant Secretary is **REVERSED**.

Entered this the 7th day of August, 1995.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman

Hugh A. Wells, Ex Officio Member
Chairman Utilities Commission

Jeff D. Batts, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:)	
The Proposed Assessment of additional sales and use tax)	
for the period of August 1990 through December, 1993)	ADMINISTRATIVE
assessed against Shropshire's Honor Boxes/)	DECISION NUMBER: 304
Deborah B. Shropshire)	
)	

THIS MATTER was heard before the Tax Review Board on May 9, 1995 in the City of Raleigh, Wake County, North Carolina in the office of the State Treasurer. It involves the petition for review by Shropshire's Honor Boxes/Deborah B. Shropshire (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on December 12, 1994 sustaining a proposed assessment of sales and use tax for the period of August 1990 through December 1993.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Jeff D. Batts, Attorney at Law participating. Hugh A. Wells, Chairman Utilities Commission was not present at the hearing.

The Taxpayer was represented at the hearing by Mathew E. Bates, Attorney at Law; Marilyn R. Mudge, Assistant Attorney General, appeared on behalf of the Department of Revenue.

After the hearing, the Board members present took the matter under advisement pursuant to G.S. §105-241.2(b1). On June 7, 1995, the Board reviewed the Petition, Brief and record of the matter in the proceeding before the Assistant Secretary. The issue presented to the Board is whether the devices used by the Taxpayer to dispense candy constitute "vending machines" within the meaning of N.C.G.S. §105-164.3(16)f. Pursuant to this statute, "the sales price of tangible personal property sold through a coin-operated vending machine, other than closed container soft drinks subject to excise tax under Article 2B of this Chapter or tobacco products, is considered to be fifty percent (50%) of the total amount for which the product is sold in the vending machines." Thus, fifty percent (50%) of gross sales through coin-operated vending machines are exempt from North Carolina sales and use tax. The Taxpayer contended that the Department and Assistant Secretary erred in determining that the devices used by the Taxpayer were not vending machines.

In the Final Decision, the Assistant Secretary made a finding of fact that the Taxpayer's honor boxes do not meet the commonly accepted meaning of coin-operated vending machine because the honor boxes contain no moving parts and are not coin-operated machines. The Assistant Secretary also found that the Revenue Laws do not contain a definition for "vending machines." The Assistant Secretary therefore concluded that the honor boxes do not constitute vending machines pursuant to the commonly accepted use of the word.

THE BOARD HAVING REVIEWED THE PETITION AND RECORD MADE IN THE PROCEEDING AND HAVING CAREFULLY CONSIDERED THE MATTERS OF RECORD RENDERS THE FOLLOWING DECISION: that the method of delivering a product for sale by a coin-operated machine or by passive operation still constitutes offering the product for sale. The dispensing of an item offered for sale is a passive matter in the transaction. Thus, absent a definition for what constitutes a vending machine, the above referenced finding of fact by the Assistant Secretary is not sufficient to conclude that Taxpayer's honor boxes are not vending machines. Therefore the conclusions of law were not supported by the findings of fact, and the decision of the Assistant Secretary was not supported by the conclusions of law.

IT IS THEREFORE ORDERED, that the Final Decision of the Assistant Secretary is REVERSED.

Entered this the 7th day of August, 1995.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

Hugh A. Wells, Chairman
Utilities Commission

Jeff D. Batts, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessment of additional sales and use
tax for the period of February 1, 1991 through
May 31, 1994 assessed against **Quadrangle Medical
Specialist, P.A.**

**ADMINISTRATIVE
DECISION NUMBER: 305**

THIS MATTER was heard before the Tax Review Board on May 9, 1995 in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer. It involves the petition for review by Quadrangle Medical Specialist, P.A. (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on December 20, 1994 sustaining a proposed assessment of sales and use tax for the period of February 1, 1991 through May 31, 1994.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Jeff D. Batts, Attorney at Law participating. Hugh A. Wells, Chairman Utilities Commission was not present at the hearing.

The Taxpayer was represented at the hearing by A. Rexford Willis, III, Attorney at Law; George W. Boylan, Special Deputy Attorney General, appeared on behalf of the Department of Revenue.

After the hearing, the Board members present took the matter under advisement pursuant to G.S. §105-241.2(b1). On June 7, 1995, the Board reviewed the Petition, Briefs and record of the matter in the proceeding before the Assistant Secretary.

FINDINGS OF FACT

THE TAX REVIEW BOARD, having reviewed the Petition, Briefs and record filed in this matter, makes the following Findings of Fact:

1. Taxpayer is a North Carolina professional association principally engaged in providing medical services to patients in three cities within the State.
2. Taxpayer has registered with the Department of Revenue for sales and use tax purposes.
3. Taxpayer purchases from vendors medicines and drugs which are used in administering treatment to patients.
4. Taxpayer has paid use tax on all such medicines and drugs with the exception of certain chemotherapy medicines and drugs.
5. With respect to the Chemotherapy Drugs, the following transaction occurs:
 - a. Taxpayer charges its patients separately and the drugs are paid for prior to delivery to the patients;
 - b. Taxpayer retains a written prescription for all Chemotherapy Drugs and makes a separate charge for such Chemotherapy Drugs on patient's bill;
 - c. Taxpayer further maintains a separate, accurate, permanent and complete record of all written prescriptions for the Chemotherapy Drugs and invoices to its patients list charges for the Chemotherapy Drugs separately from charges for any other goods or services;
 - d. Taxpayer furnishes its vendors with completed Certificates of resale, Form E-590 for the Chemotherapy Drugs.

CONCLUSIONS OF LAW

Based upon the record, the Petition, Briefs and the foregoing findings of fact, the Tax Review Board concludes as a matter of Law:

1. Pursuant to N.C.G.S. § 105-164.13(13), "medicines sold on prescription of physicians, dentist or veterinarians....." are exempt from the retail sales and use tax.

2. Pursuant to N.C.G.S. § 105-164.3(15), a "sale" or "selling" is defined as "any transfer of title or possession, or both, exchange, barter, lease, license to use or consume, or rental of tangible personal property, conditional or otherwise, in any manner or by of any means whatsoever," for consideration paid or to be paid, including the "furnishing, preparing, or serving for consideration any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property or consumed at the place at which such property is prepared, served or sold."

DECISION

IT APPEARING TO THE BOARD, based upon the foregoing findings of fact and conclusions of law, that Taxpayer sold on prescription of a physician the Chemotherapy Drugs to its patients. The sales of Chemotherapy Drugs by Taxpayer are therefore exempt from sales or use tax pursuant to N.C.G.S. § 105-164.13(13).

IT IS THEREFORE ORDERED, that the Final Decision of the Assistant Secretary is **REVERSED**.

Entered this the 7th day of August, 1995.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman

Hugh A. Wells, Chairman
Utilities Commission

Jeff D. Batts, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of motor fuels tax
on August 9, 1991 against Blaine W. Blevins, Jr.)
)
)
)
)ADMINISTRATIVE
DECISION NUMBER: 306

THIS MATTER was heard before the Tax Review Board (hereinafter "Board") on June 7, 1995 in the City of Raleigh, Wake County, North Carolina in the office of the State Treasurer. It involves the petition for review filed by Blaine W. Blevins, Jr. (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services for the Department of Revenue (hereinafter "Assistant Secretary") entered on December 8, 1994, February 2, 1995 and February 8, 1995 sustaining the proposed assessment of motor fuels tax, together with interest as provided by law, for August 9, 1991.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with Hugh Wells, Chairman, Utilities Commission and duly appointed member, Jeff D. Batts, Attorney at Law participating.

Luke D. Hyde, Attorney at Law, appeared on behalf of the Taxpayer; Christopher E. Allen, Assistant Attorney General, appeared on behalf of the Department of Revenue.

The issue presented at the hearing for the Board's review was whether the Assistant Secretary erred in concluding that taxpayer was a responsible corporate officer pursuant to G.S. § 105-253(b)(3) and, thus, personally and individually liable for all taxes due from the corporation under Article 36 and 36A of the Revenue Act.

AND IT APPEARING TO THE BOARD, that pursuant to G.S. § 105-253(b)(3), each responsible corporate officer is liable for "all taxes due from the corporation pursuant to the provisions of Article 36 and Article 36A of Subchapter V of this Chapter."

AND IT ALSO APPEARING TO THE BOARD, that the elements of willfulness or that taxpayer was incapable of exercising reasonable care is noticeably absent from G.S. § 105-253(b)(3), and are not requirements which must be affirmatively shown by the Department. Additionally, the term "responsible corporate officer" is defined in G.S. § 105-253(b) as including "the president and the treasurer of the corporation and any officers assigned the duty of filing tax returns and remitting taxes to the Secretary on behalf of the corporation." By operation of the statute, the Department correctly assessed the tax liability of the corporation against the taxpayer because he was president of the corporation and as president he would be personally and individually liable for all taxes due from the corporation under Article 36 and 36A of the Revenue Act.

AND IT FURTHER APPEARING TO THE BOARD: that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the decision by the Assistant Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Assistant Secretary is **CONFIRMED** in every respect.

Entered this the 7th day of August, 1995.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

Hugh A. Wells
Chairman Utilities Commission

Jeff D. Batts

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed assessment of Controlled Substance Excise
tax for possession of non-tax-paid Controlled Substance
on March 30, 1994 against **RICKY JEFFERSON EVANS**ADMINISTRATIVE
DECISION NUMBER: 307

THIS MATTER was heard before the Tax Review Board on May 9, 1995 in the City of Raleigh, Wake County, North Carolina in the office of the State Treasurer. It involves the Petition of Ricky Jefferson Evans (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on September 12, 1994 sustaining a proposed assessment of controlled substance excise tax for possession of non-tax-paid controlled substance.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Jeff D. Batts, Attorney at Law participating. Hugh A. Wells, Chairman Utilities Commission was not present at the hearing.

The Taxpayer and his attorney did not appear at the hearing. Christopher E. Allen, Assistant Attorney General, appeared on behalf of the Department of Revenue.

After the hearing, the Board members present took the matter under advisement pursuant to G.S. §105-241.2(b1). On June 7, 1995, the Board reviewed the Petition, Brief and the record of matter in the proceeding before the Assistant Secretary. The issue before the Board is whether the Assistant Secretary erred in sustaining the controlled substance excise tax issued March 30, 1994 including the penalty and interest imposed against the Taxpayer. The Taxpayer also argued in his petition that the statute under which the tax is assessed is unconstitutional.

N.C.G.S. §105-113.105 et. seq. provides for the levy of an excise tax on persons (dealers) who possess a non-tax-paid controlled substance. The tax is due within 48 hours after the dealer acquires a non-tax-paid controlled substance. The proposed assessment of the excise tax is presumed to be correct pursuant to N.C.G.S. §105-241.1(a), thus the burden is on the Taxpayer to overcome this presumption and rebut the assessment.

The purpose of this Board is to provide administrative review to Taxpayers from the Secretary of Revenue's decision sustaining the assessment of tax or additional tax pursuant to North Carolina Revenue Laws. The Board after review of the factual situation and the application of the statute to those facts renders its decision. N.C.G.S. §105-241.2 provides that the Board's decision shall confirm, modify, reverse, reduce, or increase the assessment or decision of the Secretary. N.C.G.S. §105-241.2 does not give this administrative board the authority or jurisdiction to rule on the constitutionality of the statute. *Great Am. Ins. Co. v. Gold*, 254 N.C. 168, 118 S.E.2d 792 (1961).

THE BOARD HAVING REVIEWED THE PETITION AND RECORD MADE IN THE PROCEEDING AND HAVING CAREFULLY CONSIDERED THE MATTERS OF RECORD AND THE ARGUMENTS PRESENTED RENDERS THE FOLLOWING DECISION: that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and that the decision by the Assistant Secretary sustaining the tax assessment was fully supported by the conclusions of law. From the record of this proceeding, there was a reasonable basis to presume that the Taxpayer was in possession of the controlled substance. Pursuant to N.C.G.S. § 105-241.1(a), the proposed assessment of the excise tax is presumed to be correct. The Taxpayer failed to provide evidence to overcome the presumption and rebut the assessment.

IT IS THEREFORE ORDERED, that the Board **confirms** the Assistant Secretary's final decision as to the assessment of the controlled substance excise tax but **reverses** the final decision as to penalty imposed against the Taxpayer and **modifies** the assessment of the penalty to be applicable only to the net amount of the tax assessed remaining unpaid after

the application of any amount received by the garnishment filed by the Department of Revenue.

Since the Tax Review Board is not empowered to pass upon the constitutionality of a statute, or its application to a particular assessment or taxpayer, the Taxpayer's argument as to the constitutionality of the statute was not properly before this forum.

Entered this the 7th day of August, 1995.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

Hugh Wells, Chairman
Utilities Commission

Jeff D. Batts, Member

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule cited as 11 NCAC 16 .0704.

Proposed Effective Date: December 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on September 26, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action: Original data requested was found not to be as valuable as anticipated.

Comment Procedures: Written comments and questions should be directed to Walter James, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-3284. Oral presentations may be made at the public hearing.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

**SECTION .0700 - HEALTH MAINTENANCE
ORGANIZATION CLAIM RESERVE
DATA REQUIREMENTS**

**.0704 CLAIM RESERVE DATA AND FORMAT
REQUIREMENTS**

(a) The data requirements in Paragraph (b) of this Rule shall be recorded for the following types of claims:

- (1) Inpatient Claims;
- (2) Physician Claims;
- (3) Referral Claims; and
- (4) Other.

(b) For the most recent ~~36-month~~ 24-month period immediately preceding and including the valuation date, the following "monthly" historical data shall be recorded by the month in which the claim or payment was incurred and by the following:

- (1) Cumulative number of claims reported through the ~~36-month~~ 24-month period;
- (2) Cumulative number of claims paid through the ~~36-month~~ 24-month period;
- (3) Cumulative dollar amount of claims paid through the ~~36-month~~ 24-month period; and
- (4) Cumulative dollar amount of claims incurred through the ~~36-month~~ 24-month period.

(c) The following monthly historical data shall be recorded for the most recent ~~36-month~~ 24-month period immediately preceding and including the valuation date:

- (1) Earned premiums by calendar month;
- (2) Total number of enrollees at the beginning and end of each month;

- (3) Data on claim amounts greater than or equal to one hundred thousand dollars (\$100,000), ~~and~~

- (4) ~~Data on any adjustments or refunds.~~

(d) Schedule H, Section II - Analysis of Unpaid Claims, updated as of the current valuation date.

(e) All data in this Rule shall be recorded on a 3.5" diskette containing a LOTUS worksheet named CLM_RES.WK3 or CLM_RES.WK1; which can be obtained from the Actuarial Services Division.

(f) A hard copy of the LOTUS worksheet shall accompany the filing.

Statutory Authority G.S. 58-2-40; 58-67-135(b); 58-67-150.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to amend rule cited as 12 NCAC 7D .0204.

Proposed Effective Date: December 1, 1995.

A Public Hearing will be conducted at 2:00 p.m. on September 18, 1995 at the SBI Complex, Conference Room - Bldg. 12, 3320 Old Garner Road, Raleigh, NC 27626.

Reason for Proposed Action: Each applicant for a license must prove three years or three thousand hours of experience in order to receive a private protective services business license. The amendment will allow the Board to consider experience which is gained through formal classroom training and will allow the Board the ability to grant up to two hundred hours of time for that experience.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. The Record of Hearing will be open for receipt of written comments on the proposed text for 30 days after the text is published in the North Carolina Register or until the date of the public hearing, whichever is longer. Written comments must be delivered to the Private Protective Services Board, 3320 Old Garner Road, Raleigh, NC 27626-0500.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

**CHAPTER 7 - PRIVATE PROTECTIVE
SERVICES**

**SUBCHAPTER 7D - PRIVATE PROTECTIVE
SERVICES BOARD**

SECTION .0200 - LICENSES: TRAINER PERMITS

.0204 DETERMINATION OF EXPERIENCE

(a) Experience requirements shall be determined in the following manner:

- (1) one year experience = 1,000 hours;
- (2) two years experience = 2,000 hours;
- (3) three years experience = 3,000 hours.

(b) Applicants must be prepared to make available upon request written documentation and/or verification of experience.

(c) The Board may, for good cause, consider any experience claimed by the applicant if gained while not in possession of a valid license, registration or trainee permit. Such

experience may include formal classroom training which is directly related to the private protective services industry. The Board may grant one half hour of credit for each hour of formal training, but will grant no more than two hundred hours. Paragraph (c) of this Rule is to be considered in addition to any other formal training credits. No credit will be given for formal training required pursuant to these Rules.

Statutory Authority G.S. 74C-5; 74C-8.

**TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0313.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 7:00 p.m. on September 28, 1995 at the Stokes County Government Center, Courtroom A, Danbury, NC.

Reason for Proposed Action:

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

ANNOUNCEMENT OF A PUBLIC HEARING TO RECLASSIFY A PORTION OF TOWN FORK CREEK
IN STOKES AND FORSYTH COUNTIES

A public hearing will be held by the N.C. Department of Environment, Health and Natural Resources on behalf of the Environmental Management Commission (EMC). The Department seeks public comment on the proposed reclassification of a portion of the Town Fork Creek watershed for future use as a drinking water supply watershed with a classification of WS-III FWS (Future Water Supply). Changes in stream classifications can affect activities in and adjacent to these waters.

The first section of this announcement will list the classification changes that are being proposed. The second section will provide a summary of the requirements associated with a water supply classification. The last section will provide information on the public hearing and how to submit comments.

Proposed Classification Change

Town Fork Creek (Roanoke River Basin)

Segment: from its source to the proposed raw drinking water supply reservoir where the intake is to be located (on the Stokes/Forsyth County line near Bannertown) including all tributaries.

Classification Change Proposed: from Class C to Classes WS-III FWS (Future Water Supply) and WS-III FWS CA (critical area).

Local Governments with Land Use Authority: Stokes and Forsyth Counties, and the Town of Rural Hall.

Summary of Requirements

The following chart summarizes the requirements related to the WS-III water supply classification. These are the major provisions of the water supply regulation (15A NCAC 2B .0104, .0202 and .0211); to review all of them, write or call the contact person listed below for more information.

Requirements for a WS-III Classification

Critical Area	Wastewater Dischargers	Development Criteria		10%/70% Provision	Agriculture BMPs
		W/O Engineered Stormwater, <u>Low Density Opt.</u>	W/Engineered Stormwater, <u>High Density Opt.</u>		
General Permits		1du*/acre or up to 12% built upon area	12-30% built upon area	Not Allowed	Required (1)
Balance of Watershed	Domestic & Non-process industrial	2du*/acre or up to 24% built upon area	24-50% built upon area	Allowed	Not Required (1)

- Notes:
- Critical area is one-half mile and draining to water supplies from the normal pool elevation of the reservoir.
 - Requirements applicable to new development. Existing single family lots are exempt.
 - Buffers required along all perennial waters; 30 foot buffer for low density and 100 foot buffer for high density development.
 - Engineered stormwater management systems are required with the high density option. Local governments will assume ultimate responsibility for the operation and maintenance of these stormwater management devices.
 - 10%/70% provision allows each local government within the watershed to allow up to 10% of their jurisdiction within the watershed to be developed at up to 70% built-upon area.
 - (1) All agricultural activities are subject to provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. A ten foot vegetated buffer or equivalent control as determined by the Soil and Water Conservation Commission is required in the critical area. Animal operations which are deemed, and are, permitted under 15A NCAC 2H .0217 are allowed in all water supply watersheds.

The Stokes County Board of commissioners and the Stokes Soil and Water Conservation District requested the reclassification of the Town Fork Creek watershed to a WS-III FWS. Division records indicate the existence of six domestic NPDES wastewater discharge permits within the watershed. The existing land use and wastewater discharge permits qualify the watershed for a WS-III water supply classification.

The FWS supplemental classification was recently adopted by the EMC. The purpose of this supplemental classification is to recognize certain waters of the state for use as future drinking water supplies. The effect of reclassifying the watershed as WS-III FWS would mean that the local governments having land use jurisdiction within the watershed (Stokes and Forsyth Counties along with the Town of Rural Hall) would not be responsible for adopting and implementing drinking water supply protection ordinances until 270 days after the EMC has removed the FWS supplemental classification through the rule-making process. The EMC can proceed with removing the FWS after the Division of Environmental Health issues a final letter of approval for construction of a water treatment plant in Town Fork Creek. Although the local governments are not obligated to implement a stormwater management program for drinking water supply protection, through their ordinances upon reclassification to WS-III FWS, they have the option of adopting and implementing water supply watershed protection ordinances. However, requirements for activities administered by the state, such as the issuance of permits for landfills, NPDES wastewater discharges, land application of residuals and road construction activities, that are applicable to a WS-III classification will become effective upon reclassification to WS-III FWS.

The purpose of the development density controls, the wastewater discharge requirements and the agricultural management practices are to prevent the degradation of the water quality for use as a drinking water supply from pollutant impacts.

Public Hearing Information

PURPOSE: The purpose of this hearing and the written comment period is to receive comments on the proposed reclassification from interested people. The written comment period will be open until October 30, 1995. The EMC is interested in comments in favor of and opposed to the proposed changes.

The EMC may make some changes in final rules without renote and rehearing, as long as the adopted rules do not differ substantially from the proposed rules. The EMC may adopt final management requirements, rules and classifications that are more or less stringent than those being noticed. (See NCGS 150B- 21.2(f) for this authority.) The EMC must determine that the final adopted rules are not substantially different from the proposed rules. All interested and potentially affected persons are strongly encouraged to read the entire announcement and supporting information and make comments on the proposal presented. The proposed effective date for final rules for these proposed changes is February 1, 1996.

Comment Procedures: *You may submit comments, statements, data and other information in writing prior to, during or after the hearing but no later than October 30, 1995. You may also present verbal comments at the hearing. The Hearing Officer may limit the length of time that you may speak so that all those who wish to speak may have an opportunity to do so. We encourage you to submit written comments. For more information, you may obtain further explanations and details of the proposed reclassification by writing or calling:*

*Steve Zoufaly
DEHNR/Division of Environmental Management
P.O. Box 29535
Raleigh, NC 27626-0535
(919) 733-5083, extension 566*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0313 ROANOKE RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
 - Bertie County
 - Caswell County
 - Forsyth County
 - Granville County
 - Guilford County
 - Halifax County
 - Martin County
 - Northampton County
 - Person County
 - Rockingham County
 - Stokes County
 - Surry County
 - Vance County
 - Warren County
 - Washington County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Raleigh Regional Office
 - 3800 Barrett Drive
 - Raleigh, North Carolina
 - (B) Washington Regional Office
 - 1424 Carolina Avenue
 - Washington, North Carolina
 - (C) Winston-Salem Regional Office
 - 8025 North Point Boulevard, Suite 100

Winston-Salem, North Carolina

(b) Unnamed Streams. Such streams entering Virginia are classified "C." Except that all backwaters of John H. Kerr Reservoir and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "B," and all backwaters of Lake Gaston and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "C and B".

(c) The Roanoke River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) May 18, 1977;
- (2) July 9, 1978;
- (3) July 18, 1979;
- (4) July 13, 1980;
- (5) March 1, 1983;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) July 1, 1991;
- (9) August 3, ~~1992~~ 1992;
- (10) February 1, 1996.

(d) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective July 1, 1991 with the reclassification of Hyco Lake (Index No. 22-58) from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective February 1, 1996 with the reclassification of Town Fork Creek [Index No. 22-25-(0.5)] from its source to the Stokes County water supply intake (near the Stokes-Forsyth County line at Bannertown) including tributaries from Class C to Classes WS-III FWS (Future Water Supply) and WS-III FWS CA (Critical Area).

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

lina 27604-1188.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10F .0323.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

Proposed Effective Date: December 1, 1995.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

A Public Hearing will be conducted at 7:00 p.m. on September 18, 1995 at the Burke County Courthouse, Courtroom #2, Morganton, North Carolina.

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

Reason for Proposed Action: To regulate boat speeds in congested areas.

.0323 BURKE COUNTY

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from September 1, 1995 - October 2, 1995. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 North Salisbury Street, Raleigh, North Caro-

(a) Regulated Areas. This Rule applies only to the following lakes or portions of lakes which lie within the boundaries of Burke County:

- (1) Lake Hickory;
- (2) Lake James;
- (3) Lake Rhodhiss.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of any designated and marked public boat launching ramp,

bridge, marina, boat storage structure, boat service area, dock or pier while on the regulated areas described in Paragraph (a) of this Rule. On Lake James, no person shall operate a vessel at greater than no-wake speed in the following areas as delineated by appropriate markers:

- (1) Holiday Shores Subdivision;
- (2) Lake James Campground;
- (3) Laurel Pointe Subdivision;
- (4) Boyd Moore Cove.

~~or within 50 yards of any designated and marked private boat launching ramp, bridge, marina, boat storage structure, boat service area, dock or pier around the Holiday Shores Subdivision on Lake James or within 50 yards of the Lake James Campground, or within 50 yards of the community docks at Laurel Pointe subdivision.~~

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(e) Placement and Maintenance of Markers. The Board of Commissioners of Burke County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. With regard to marking the regulated areas described in Paragraph (a) of this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Statutory Authority G.S. 75A-3; 75A-15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10F .0324.

Proposed Effective Date: December 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on September 18, 1995 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC 27604.

Reason for Proposed Action: To regulate boat speeds in congested areas.

Comment Procedures: Interested persons may present

their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from September 1, 1995 - October 2, 1995. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 North Salisbury Street, Raleigh, North Carolina 27604-1188.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0324 DAVIDSON COUNTY

(a) Regulated Areas. This Rule applies only to those portions of High Rock Lake, Tuckertown Lake, and Badin Lake which lie within the boundaries of Davidson County.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked public boat launching ramp, bridge, dock, marina, boat storage structure, boat service area or pier while on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.

(d) Speed Limit at Mouth of Cove. No person shall operate a vessel at greater than no-wake speed while within 50 yards on either side of the mouth of Beaver Dam Creek Cove located on Badin Lake or in Abbotts Creek Cove of High Rock Lake as delineated by appropriate markers.

(e) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.

(f) Placement and Maintenance of Markers. The Board of Commissioners of Davidson County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. With regard to marking the regulated areas described in Paragraph (a) of this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Statutory Authority G.S. 75A-3; 75A-15.

TITLE 18 - SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of the Secretary of State intends to amend rule cited as 18 NCAC 06 .1402.

Proposed Effective Date: December 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A public hearing may be requested by writing to Mr. Gene Cella, Deputy Securities Administrator, North Carolina Department of the Secretary of State, Securities Division, 300 North Salisbury Street, Suite 100, Raleigh, NC 27603-5909 by September 18, 1995.

Reason for Proposed Action: To raise the filing fee to the amount required by recent legislative changes.

Comment Procedures: Interested person may submit written statements by mail addressed to Mr. Gene Cella, Deputy Securities Administrator, North Carolina Department of the Secretary of State, Securities Division, 300 North Salisbury Street, Suite 100, Raleigh, NC 27603-5909. The comment period will end on October 2, 1995.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 6 - SECURITIES DIVISION

SECTION .1400 - REGISTRATION OF DEALERS AND SALESMEN

.1402 APPLICATION FOR REGISTRATION OF SALESMEN

(a) The application for registration as a salesman shall contain the following:

- (1) an executed Uniform Application for Securities and Commodities Industry Representative and/or Agent (Form U-4) or the appropriate successor form;
- (2) a fee in the amount of ~~forty-five~~ fifty-five dollars (~~\$45.00~~) (\$55.00);
- (3) evidence of a passing grade of seventy percent on the Uniform Securities Agent State Law Examination (USASLE - Series 63) as well as the appropriate NASD examination as required by Rule .1413 of this Section.

(b) The application for registration as a salesman shall be filed as follows:

- (1) NASD member dealers shall file all salesman applications for registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box

- 37441, Washington, D.C. 20013;
- (2) Non-NASD member dealers shall file all salesman applications for registration in the State of North Carolina directly with the Securities Division.

(c) The salesman or the dealer for which the salesman is registered shall file with the administrator, as soon as practicable but in no event later than 30 days, notice of any disciplinary action taken against a salesman by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit, warrant, criminal warrant, or criminal indictment filed against the salesman alleging violation of any federal or state securities laws. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the salesman or the dealer for which the salesman is registered shall file a correcting amendment as soon as practicable but in no event later than thirty days. Such filing is to be made by NASD member dealers and their salesmen to the NASAA/NASD Central Registration Depository and non-NASD member dealers and their salesmen shall make such filing directly with the Securities Division.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon approval of the application by the administrator, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) A salesman shall only be registered in this State with one dealer.

Statutory Authority G.S. 78A-37(a); 78A-37(b); 78A-38(c); 78A-39(b)(4); 78A-49(a).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Licensing Board for General Contractors intends to adopt rule cited as 21 NCAC 12 .0410 and amend rule cited as 21 NCAC 12 .0302.

Proposed Effective Date: December 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on October 18, 1995 at the Office of the North Carolina Licensing Board for General Contractors, 3739 National Drive, Suite 225, Raleigh, NC.

Reason for Proposed Action:

21 NCAC 12 .0302 - to change the fee from \$5.00 to \$6.00 per application package if the package is mailed and from \$4.00 to \$5.00 per application package if the package need not be mailed.

21 NCAC 12 .0410 - to require that persons taking the examination receive a score of at least 70 for each part of an examination in order to pass the examination and to allow persons who do not receive a passing score of 70 or higher on each required part of an examination to retake and pass the required part of an examination within 12 consecutive months.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule or rule change may file a notice with the Board at least ten (10) days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address is P.O. Box 17187, Raleigh, NC 27619. Written submission of comments or argument will be accepted up to and including October 18, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SECTION .0300 - APPLICATION PROCEDURE

.0302 REQUEST

(a) A request for the required application form may be made at the address in Rule .0101 of this Chapter.

(b) The Board shall charge a fee of ~~five dollars (\$5.00)~~ six dollars (\$6.00) per application package if the package is mailed, and charge a fee of ~~four dollars (\$4.00)~~ five dollars (\$5.00) per application package if the package need not be mailed. The Board shall not charge more than the cost of publication and mailing of the application package. Should the total cost of development, mailing and publication be less than ~~five dollars (\$5.00)~~ six dollars (\$6.00), the Board ~~will~~ shall adjust the fees accordingly.

Statutory Authority G.S. 87-1; 87-10; 150B-19(5).

SECTION .0400 - EXAMINATION

**.0410 FAILING EXAMINATION;
REEXAMINATION**

Persons taking the examination must receive a score of at least 70 for each part of an examination in order to pass the examination. Persons who do not receive a passing score of 70 or higher on each required part of an

examination shall have one calendar year (12 consecutive months) to retake and pass the required part of an examination, for the same classification. The calendar year begins with the first examination date of the part of the examination resulting in a score of less than 70. If a person does not receive a score of 70 or higher on all parts of an examination within one calendar year, the person is required to take all parts of the examination as provided by G.S. 87-10(d).

Statutory Authority G.S. 87-10.

**CHAPTER 19 - BOARD OF ELECTROLYSIS
EXAMINERS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Electrolysis Examiners intends to adopt rules cited as 21 NCAC 19 .0104, .0204 and repeal 21 NCAC 19 .0616.

Proposed Effective Date: December 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on October 7, 1995 at the State Employees Credit Union Building, Fourth Floor Conference Room, 801 Hillsborough Street, Raleigh, NC 27605-0834.

Reason for Proposed Action: It is necessary to set out minimum standards for advertising, to establish application procedures, time limits, and supervisory requirements for temporary licenses, and to remove the prohibition on charges for student services.

Comment Procedures: The record of hearing will be open for receipt of written comments from September 1, 1995, through the close of the hearing on October 7, 1995. Written comments may be delivered to the Board at its mailing address (PO Box 10834, Raleigh, NC 27605-0834) or submitted at the hearing. Anyone wishing to speak at the hearing should notify the Chairman in writing at the Board's mailing address no later than 5:00 p.m. on the day before the hearing. All others will be able to speak only if time permits.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SECTION .0100 - GENERAL PROVISIONS

.0104 ADVERTISING

No advertisement by an electrologist, or for the services of any electrologist, licensed by this Board shall be false or misleading. An electrologist who fails to correct such an advertisement, or who fails to cause it to be corrected, at the earliest opportunity after receipt of

written notice by the Board shall be subject to disciplinary action in accordance with G.S. 88A-21.

Statutory Authority G.S. 88A-6; 88A-21.

SECTION .0200 - APPLICATION PROCEDURES

.0204 TEMPORARY LICENSE

(a) An applicant for an electrologist license who is required to take the Board's examination and has complied with 21 NCAC 19 .0202 may request a temporary license. The request may be made with the initial application for an electrologist license or at any time thereafter. The applicant shall submit with the request a written statement by a licensed electrologist or electrology instructor that the applicant will be practicing in this individual's office and that this individual has agreed to supervise the applicant's practice. On receiving a request for a temporary license that complies with this Paragraph, the Board will issue the applicant a temporary license subject to the time limits in Paragraph (b) of this Rule.

(b) A temporary license is valid only during the dates stated in the license. Consistent with G.S. 88A-11.1, a temporary license cannot be valid for more than six months. The Board will begin issuing temporary licenses no sooner than five months before the date of the next scheduled examination. The Board will stop issuing temporary licenses 30 days before that examination. All temporary licenses shall expire one month after the date of that examination.

(c) Except as provided in Paragraph (d) of this Rule, a temporary license may not be renewed.

(d) The holder of a temporary license who did not take the examination for which the holder was scheduled may apply to have the temporary license renewed. The applicant shall:

- (1) apply to retake the examination on the next occasion it is offered;
- (2) provide a written recommendation from the applicant's supervisor that the Board renew the applicant's temporary license;
- (3) show to the satisfaction of the Board that the applicant was unable to appear and take the examination for which the applicant was previously scheduled due to causes beyond the applicant's control.

If the Board determines that the applicant has met the requirements of this Paragraph, the Board will renew the applicant's temporary license. The renewed temporary license shall expire six months after the date it is renewed or 30 days after the date of the next scheduled examination, whichever is shorter, and it may not be renewed again.

(e) The holder of a temporary license shall practice only under the supervision of another licensed electrolo-

gist or electrology instructor. As used in this Rule, "supervision of another" means that the other is physically in the same establishment as the holder of the temporary license and that the acts done by the holder of the temporary license are done pursuant to the other's order, control, and approval. The holder of a temporary license shall notify the Board within five business days of any change of supervisor and shall submit to the Board within 10 business days a written statement by the new supervisor that the holder of the temporary license will be practicing in the new supervisor's establishment and that the new supervisor has agreed to supervise his or her practice.

(f) Notwithstanding any other provision of this Rule, the Board will not issue a temporary license to anyone who has failed the examination for licensure as an electrologist, to anyone who has previously been issued a temporary license, or to anyone whose temporary license was revoked pursuant to G.S. 88A-21.

Statutory Authority G.S. 88A-6; 88A-10.1.

SECTION .0600 - SCHOOLS

.0616 REMUNERATION PROHIBITED

~~No school certified by the Board shall, directly or indirectly, accept remuneration or make any charge for services rendered by its students for practice work.~~

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend rules cited as 21 NCAC 36 .0109, .0202 - .0203, .0209, .0211, .0216 - .0219, .0221, .0225, .0318, .0320, .0322; and adopt rule cited as 21 NCAC 36 .0227.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 1:30 p.m. on October 27, 1995 at the Brownstone Hotel, 1707 Hillsborough Street, Raleigh, NC.

Reason for Proposed Action:

21 NCAC 36 .0109 - To clarify Board member qualifications for registered nurses.

21 NCAC 36 .0202, .0209 - To clarify required information to be submitted.

21 NCAC 36 .0203 - To reorder for clarity and clarify required information.

21 NCAC 36 .0211 - To clarify title of section, eliminate

non-available qualifications, and clarify qualifications.
21 NCAC 36 .0216 - To improve process of census of nursing personnel.

21 NCAC 36 .0217 - To clarify and reorder.

21 NCAC 36 .0218 - To clarify type of nursing program and to clarify and reorder requirements for endorsement of nurses from Canada and others from outside U.S.

21 NCAC 36 .0219 - To add requirement for receiving temporary license.

21 NCAC 36 .0221 - To clarify.

21 NCAC 36 .0225 - To reword for clarification.

21 NCAC 36 .0227 - As stated in both G.S. 90-6 and G.S. 90-171.23(14), both the Board of Nursing and the Medical Board are to adopt rules to govern the performance of medical acts by registered nurses (nurse practitioners).

21 NCAC 36 .0318 - To clarify requirements.

21 NCAC 36 .0320 - To clarify educational standards related to admission requirements for nursing programs and address concerns relative to ADA.

21 NCAC 36 .0322 - To require most current DSM volume.

Comment Procedures: Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written comments concerning these amendments must be submitted by October 20, 1995, to: North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, ATTN: Jean H. Stanley, APA Coordinator.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SECTION .0100 - GENERAL PROVISIONS

.0109 SELECTION AND QUALIFICATIONS OF NURSE MEMBERS

(a) Vacancies in nurse member positions on the Board that are scheduled to occur during the next year shall be announced in the December issue of the North Carolina Board of Nursing "Bulletin", which shall be mailed to the address on record for each North Carolina currently licensed nurse on December 1. The "Bulletin" shall include a petition form for nominating a nurse to the Board and information on filing the petition with the Board.

(b) Each petition shall be checked with the records of the Board to validate that the nominee and each petitioner hold a current North Carolina license to practice nursing. If the nominee is found to be not currently licensed, the petition shall be declared invalid. If any petitioners are found to be not currently licensed and this finding decreases the number of petitioners to less than ten, the petition shall be declared invalid.

(c) On a form provided by the Board, each nominee

shall indicate the category for which nominee is seeking election, shall attest to meeting the qualifications specified in G.S. 90-171.21(d) and shall provide written permission to be listed on the ballot. The form must be returned postmarked on or before April 15.

(d) The majority of employment income of registered nurse members of the Board, must be earned by holding positions of with primary responsibility responsibilities in nursing education or in nursing practice which includes administration, supervision, planning, delivery or evaluation of nursing care as specified in G.S. 90-171.21(d). The following ~~definitions~~ apply in determining qualifications for registered nurse categories of membership:

- (1) Nurse Educator includes any nurse who teaches in or directs a basic or graduate nursing program; or who teaches in or directs a continuing education or staff development program for nurses. At least two nurse educators shall represent basic nursing programs.
- (2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing to inpatients.
- (3) Hospital Nursing Service Director is any nurse who is the chief executive officer for nursing service.
- (4) Employed by a hospital includes any nurse employed by a hospital.
- (5) Employed by a physician includes any nurse employed by physician or group of physicians licensed to practice medicine in North Carolina and engaged in private practice.
- (6) Employed by skilled or intermediate care facility includes any nurse employed by a long term nursing facility.
- (7) Registered nurse approved to perform medical acts includes any nurse approved for practice in North Carolina as a Nurse Practitioner or Certified Nurse Midwife.
- (8) Community health nurse includes any nurse who functions as a generalist or specialist in areas including, but not limited to, public health, student health, occupational health or community mental health.

(e) The term "nursing practice" when used in determining qualifications for registered or practical nurse categories of membership, means any position for which the holder of the position is required to hold a current license to practice nursing.

(f) A nominee shall be listed in only one category on the ballot.

(g) If there is no nomination in one of the registered nurse categories, all registered nurses who have been

duly nominated and qualified shall be eligible for an at-large registered nurse position. A plurality of votes for the registered nurse not elected to one of the specified categories shall elect that registered nurse to the at-large position.

(h) Separate ballots shall be prepared for election of registered nurse nominees and for election of licensed practical nurse nominees. Nominees shall be listed in random order on the ballot for licensed practical nurse nominees and within the categories for registered nurse nominees. Ballots shall be accompanied by biographical data on nominees and a passport-type photograph. Ballots shall prescribe the method of voting.

(i) Any nominee may withdraw her/his name at any time by written notice prior to the date and hour fixed by the Board as the latest time for return for ballots. Such nominee shall be eliminated from the contest and any votes cast for that nominee shall be disregarded.

(j) On or about June 15, the appropriate ballot and a return official envelope shall be mailed to the address on record for each currently licensed nurse on that date, together with a notice designating the latest day and hour for return of ballot which shall not be earlier than the tenth day following the mailing.

(k) The Board of Nursing may contract with a computer or other service for receipt of envelopes with ballots and the counting of ballots.

(l) The counting of ballots shall be conducted as follows:

- (1) The certificate number and name of the voter shall be entered on the perforated section of the ballot sheet.
- (2) The certificate number and name of the voter shall be matched with the registration list. In the event that there is not a match, the entire ballot sheet shall be set aside for inspection, validation, or invalidation by the Board of Nursing.
- (3) Those ballots which are not set aside shall have the perforated section completely separated from the ballot portion of the sheet.
- (4) Only official ballots shall be counted.
- (5) A ballot marked for more names than there are positions to be filled shall not be counted for that category but shall be counted for all other categories voted correctly.
- (6) If for any reason it is impossible to determine a voter's choice for a category of nurse, that ballot shall not be counted for that category, but shall be counted for all other categories clearly indicated.
- (7) Ballots identified in Subparagraphs (2), (5), and (6) of this Paragraph shall be set aside for inspection and determination by the Board of Nursing.

(m) A plurality vote shall elect. If more than one person is to be elected in a category, the plurality vote

shall be in descending order until the required number has been elected. In any election, if there is a tie vote between nominees, the tie shall be resolved by a draw from the names of nominees who have tied.

(n) The results of an election shall be recorded in the minutes of the next regular meeting of the Board of Nursing following the election and shall include at least the following:

- (1) the number of nurses eligible to vote,
- (2) the number of return ballots set aside and the disposition of same,
- (3) the number of ballots cast,
- (4) the number of ballots declared invalid, and
- (5) the number of votes cast for each person on the ballot.

(o) The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.

(p) All petitions to nominate a nurse, signed consents to appear on the ballot, verifications of qualifications, perforated sections of the ballot sheets containing the certificate number and name of the voter, and the ballots shall be preserved for a period of three months following the close of an election.

Statutory Authority G.S. 90-171.21; 90-171.23(b).

SECTION .0200 - LICENSURE

.0202 INACTIVE STATUS

(a) A registrant who holds a current license and who desires to discontinue the practice of nursing in North Carolina may request inactive status. While remaining on inactive status, the registrant may not practice nursing in North Carolina and is not subject to payment of the license renewal fee.

(b) A registrant whose license status is inactive and who desires to resume the practice of nursing in North Carolina must be removed from inactive status and must obtain a current license. To this end the registrant will:

- (1) furnish information required on forms provided by the Board; ~~and~~
- (2) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (3) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
- (4) submit such other evidence that the Board may require to determine whether the license should be reactivated; and
- (5) (2) submit the current fee for renewal.

(c) The registrant whose license has been inactive for a period of five years or more will also submit:

- (1) evidence of mental and physical health necessary to competently practice nursing;
- (2) evidence of competency to resume the prac-

tice of nursing through:

- (A) satisfactory completion of a Board-approved course; or
- (B) an active license in another jurisdiction within the last five years; and
- (3) a recent photograph for identification purposes, if deemed necessary.

(d) If a refresher course is required, the registrant must apply for reactivation of the license within one year of completing the refresher course in order to receive a current license. The application for reactivation must include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives and is deemed competent to practice nursing at the appropriate level of licensure.

(e) The Board may decline to reactivate a license if it is not satisfied as to the applicant's ability to practice nursing ~~or it may issue a license for a restricted period of time.~~

Statutory Authority G.S. 90-171.23(b); 90-171.36; 90-171.37.

.0203 REINSTATEMENT OF LAPSED LICENSE

(a) The registrant whose license has lapsed and who desires reinstatement of that license will:

- (1) furnish information required on forms provided by the Board;
- ~~(2) provide a statement of the reason for failure to apply for renewal prior to the deadline;~~
- (2) (3) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (3) (4) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
- (4) (5) submit such other evidence that the Board may require to determine whether the license should be reinstated; and
- (5) provide a statement of the reason for failure to apply for renewal prior to the deadline; and
- (6) submit payment of reinstatement and renewal fee.

(b) The registrant whose license has lapsed for a period of five years or more will also submit:

- (1) evidence of mental and physical health necessary to competently practice nursing;
- (2) evidence of satisfactory completion of a Board-approved refresher course or proof of active licensure within the past five years in another jurisdiction; and
- (3) a recent photograph for identification purposes, if deemed necessary.

(c) If a refresher course is required, the registrant must apply for reinstatement of the license within one year of completing the refresher course in order to

receive a current license. The application for reinstatement must include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives and is deemed competent to practice nursing at the appropriate level of licensure.

(d) The Board may decline to reinstate a license if it is not satisfied as to the applicant's ability to practice nursing ~~or it may issue a license for a restricted period of time.~~

Statutory Authority G.S. 90-171.23(b); 90-171.35; 90-171.37.

.0209 DUPLICATE CERTIFICATE

(a) A duplicate certificate, so stamped, may be issued in the event of loss of the original certificate upon submission receipt of a written, signed request which provides: and upon receipt of notarized verification of:

- (1) identifying data, including certificate number and social security number;
- (2) ~~certification of statement of circumstances surrounding loss;~~ and
- (3) payment of a duplication fee.

(b) In the event that the original certificate never reached the registrant, a duplicate is furnished without fee upon receipt of a notarized statement to that effect.

Statutory Authority G.S. 90-171.23(b)(3); 90-171.27(b).

.0211 LICENSURE BY EXAMINATION

(a) An applicant meets the educational qualifications to take the examination for licensure to practice as a registered nurse by:

- (1) graduating from a Board approved nursing program designed to prepare a person for registered nurse licensure;
- (2) graduating from a nursing program outside the United States or Canada that is designed to provide graduates with comparable preparation for licensure as a registered nurse, and submitting the certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the required educational qualifications.

(b) An applicant meets the educational qualifications to take the examination for licensure to practice as a licensed practical nurse by:

- (1) graduating from a Board approved nursing program designed to prepare a person for practical nurse licensure;
- (2) graduating from a nursing program outside the United States or Canada that is designed to provide graduates with comparable preparation for licensure as a licensed practical nurse, and submitting evidence from an evaluation agency of the required educational

qualifications and evidence of English proficiency. The evaluation agency(s) for educational qualifications shall be selected from a list of evaluation agencies published by the National Council of State Boards of Nursing, Inc., which is hereby incorporated by reference, including subsequent amendments of the referenced materials. The list of such agencies is available, at no cost, from the North Carolina Board of Nursing. The evidence of English proficiency shall be passing the Test of English as a Foreign Language with a score of at least 550;

(3) graduating from a Board approved nursing program designed to prepare graduates for registered nurse licensure, and failing to pass the examination for registered nurse licensure; or

(4) graduating from a nursing program outside the United States and Canada that is designed to prepare graduates for registered nurse licensure, submitting evidence of English proficiency, by passing Test of English as a Foreign Language with a score of at least 550 or passing the English portion of the examination administered by the Commission on Graduates of Foreign Nursing Schools; and failing to pass the examination for registered nurse licensure in any jurisdiction. or

~~(5) completing a Board approved course of study such as offered by the military services branches for Hospital Corpsman. The Board approved course of study shall include:~~

~~(A) a military service branch basic hospital corpsman course;~~

~~(B) advanced training in clinical nursing practice;~~

~~(C) a college level human lifespan growth and development course; and~~

~~(D) a nursing course that includes maternal-child nursing theory and clinical, the legal role of the LPN, the nursing process and nutrition.~~

(c) An application shall be submitted to the Board of Nursing and a registration form to the testing service. The applicant must meet all requirements of the National Council of State Boards of Nursing, Inc.

(d) The initial application shall be held active until the applicant passes the examination or one year, whichever occurs first. The time begins on the date the applicant is determined to be eligible for the licensure examination. The Authorization to Test document issued by the testing service shall be valid until the applicant takes the examination or 180 days, whichever occurs first. The applicant must submit a fee to re-establish eligibility for an expired Authorization to Test document.

(e) The examinations for licensure developed by the

National Council of State Boards of Nursing, Inc. shall be the examinations for licensure as a registered nurse or as a licensed practical nurse in North Carolina.

(1) These examinations shall be administered in accordance with the contract between the Board of Nursing and the National Council of State Boards of Nursing, Inc.

(2) The examinations for licensure shall be administered at least twice a year.

(3) Results for the examination shall be reported, by mail only, to the individual applicant and to the director of the program from which the applicant was graduated. Aggregate results from the examination(s) may be published by the Board.

(4) The passing standard score for each of the five tests comprising the examination for registered nurse licensure, up to and including the February 1982 examination was 350. For the examination offered in July 1982 and through July 1988, the passing score was 1600. Beginning February 1989, the results for registered nurse licensure is reported as "PASS" or "FAIL".

(5) The passing score for the examination for practical nurse licensure, up to and including the April 1988 was 350. Beginning October 1988, the results for practical nurse licensure is reported as "PASS" or "FAIL".

(f) Applicants who meet the qualifications for licensure by examination shall be issued a certificate of registration and a license to practice nursing for the remainder of the biennial period. The qualifications include:

(1) a "PASS" result on the licensure examination;

(2) evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;

(3) evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s); and

(4) such other evidence that the Board may require to determine whether the license should be issued.

(g) Applicants for a North Carolina license may take the examination for licensure developed by the National Council of State Boards of Nursing, Inc. in any member jurisdiction of the Council.

Statutory Authority G.S. 90-171.23(15); 90-171.29; 90-171.30.

.0216 CENSUS OF NURSING PERSONNEL

~~Hospitals and other health care agencies shall furnish annually, on forms satisfactory to the Board, the name and certificate and renewal number of~~

(a) Employers shall maintain a current list of persons employed for the practice of nursing as of January 1 of each year which provides the following:

- (1) name;
- (2) level of licensure;
- (3) certificate number; and
- (4) expiration date of license.

(b) Upon request of the Board, this list will be submitted for review.

~~Employees found to be not licensed, and their employers, are notified by the Board of requirements of the law and appropriate follow up is made.~~

~~At intervals specified by the Board, agencies are required to file the same information on new persons employed for the practice of nursing since the preceding census report.~~

Statutory Authority G.S. 90-171.23(b); 90-171.43; 90-171.44(3)(5).

.0217 REVOCATION, SUSPENSION, OR DENIAL OF LICENSE

(a) The definitions contained in G.S. 90-171.20 and G.S. 150B-2(01), (2), (2b), (3), (4), (5), (8), (8a), (8b), (9) are adopted by reference within this Rule according to G.S. 150B-14(c). In addition, the following definitions apply:

- (1) "Investigation" means a careful and detailed exploration of the events and circumstances related to reported information in an effort to determine if there is a violation of any provisions of this Act or any rule promulgated by the Board.
- (2) (4) "Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve as procedural officer for contested cases.
- (3) (2) "Prosecuting Attorney" means the attorney retained by the Board of Nursing to prepare and prosecute contested cases.

(b) A nursing license which has been forfeited under G.S. 15A-1331A may not be reinstated until the licensee has successfully complied with the court's requirements, has petitioned the Board for reinstatement, has appeared before the Licensure Committee, and has had reinstatement approved. The license may initially be reinstated with restrictions.

(c) Behaviors and activities which may result in disciplinary action by the Board include, but are not limited to, the following:

- (1) drug or alcohol abuse;
- (2) violence-related crime;
- (3) illegally obtaining, possessing or distributing drugs or alcohol for personal or other use, or other violations of G.S. 90-86 to 90-113.8;
- (4) evidence of any crime which undermines the public trust;

- (5) failure to make available to another health care professional any client information crucial to the safety of the client's health care;
- (6) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (7) practicing or offering to practice beyond the scope permitted by law;
- (8) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (9) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
- (10) abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuing of such care;
- (11) harassing, abusing, or intimidating a client either physically or verbally;
- (12) failure to maintain an accurate record for each client which records all pertinent health care information as defined in Rule .0224(f)(2) or .0225(f)(2);
- (13) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (14) exercising undue influence on the client, including the promotion of the sale of services, appliance, or drugs for the financial gain of the practitioner or of a third party;
- (15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;
- (16) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
- (17) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law;
- (18) guaranteeing that a cure will result from the performance of professional services;
- (19) altering a license by changing the expiration date, certification number, or any other information appearing on the license;

- (20) using a license which has been altered;
- (21) permitting or allowing another person to use his or her license for the purpose of nursing;
- (22) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure;
- (23) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
- (24) accepting responsibility for client care while impaired by alcohol or other pharmacological agents; or
- (25) falsifying a client's record or the controlled substance records of the agency.
- (26) inappropriately kissing, fondling, touching or engaging in any other activities of a sexual nature with a client while responsible for the care of the individual.

(d) When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The licensee may request a hearing. At the hearing the issues will be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(e) Before the North Carolina Board of Nursing makes a final decision in any contested case, the person, applicant or licensee affected by such decision will be afforded an administrative hearing pursuant to the provisions of Article 3A, Chapter 150B of the North Carolina General Statutes.

- (1) The paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for the North Carolina Board of Nursing.
- (2) The following general statutes, rules, and procedures apply and are adopted by reference within this Rule according to G.S. 150B-14(c), unless another specific statute or Rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36 .0224-.0225; Article 3A, Chapter 150B; and

Rule 6 of the General Rules of Practice for Superior and District Court.

- (3) Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or his attorney who prepares the document and shall contain his name, title/position, address, and telephone number. If the individual involved is a licensed nurse the nursing license certificate number shall appear on all correspondence with the Board of Nursing.

(f) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive Director of the Board pursuant to G.S. 90-171.23(b)(3). Such a finding shall be incorporated with the order of the Board of Nursing and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced in a timely manner.

(g) The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation, by the Discipline Consultant or other authorized Board staff, of a written or verbal complaint and review with legal counsel or prosecuting attorney or Executive Director.

- (1) Subsequent to an investigation and validation of a complaint, a Letter of Charges will be sent on behalf of the Board of Nursing to the licensee who is the subject of the complaint.
 - (A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
 - (B) The Letter of Charges serves as the Board's formal notification to the licensee that an allegation of possible violation(s) of the Nursing Practice Act has been initiated.
 - (C) The Letter of Charges does not in and of itself constitute a contested case.
- (2) The Letter of Charges shall include the following:
 - (A) a short and plain statement of the factual allegations;
 - (B) a citation of the relevant sections of the statutes and/or rules involved;
 - (C) notification that a settlement conference will be scheduled upon request;
 - (D) explanation of the procedure used to govern the settlement conference.
 - (E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, an administrative hearing will be scheduled; and

- (F) if applicable, and in accordance with Board-adopted policy, an offer of voluntary surrender or reprimand also may be included in specified types of alleged violations of the Nursing Practice Act.
- (3) A case becomes a contested case after the licensee, person, or applicant disputes the allegations contained in the Letter of Charges, requests an administrative hearing, or refuses to accept a settlement offer extended by the Board of Nursing.

(h) No Board member shall discuss with any party the merits of any case pending before the Board of Nursing. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself from any participation with the majority of the Board of Nursing hearing the case.

(i) A settlement conference, if requested by the licensee, is held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.

- (1) The conference shall be held in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all involved parties.
- (2) All parties shall attend or be represented at the settlement conference. The parties will be prepared to discuss the alleged violations and the incidents on which these are based.
- (3) Prior to the commencement of the settlement conference, a form shall be signed by the licensee which invalidates all previous offers made to the licensee by the Board.
- (4) At the conclusion of the day during which the settlement conference is held, a form must be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:
 - (A) if a settlement is reached, the Board of Nursing will forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or
 - (B) if a settlement cannot be reached, the case will proceed to a formal administrative hearing.

(j) Disposition may be made of any contested case or an issue in a contested case by stipulation, agreement, or consent order at any time prior to or during the hearing of a contested case.

(k) The Board of Nursing shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The notice shall include:

- (1) Acknowledgment of service, or attempted service, of the Letter of Charges in compliance with Paragraph (f) of this Rule;

- (2) Date, time, and place of the hearing;
- (3) Notification of the right of a party to represent himself or to be represented by an attorney;
- (4) A statement that, pursuant to Paragraph (m) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;
- (5) A statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing;
- (6) A statement advising the licensee that a list of all witnesses for the licensee should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and
- (7) A statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.

(l) Prehearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to testimony or exhibits, to obtain stipulations of agreement on undisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

- (1) The prehearing conference will be conducted in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all parties.
- (2) The prehearing conference shall be an informal proceeding and shall be conducted by a Board-designated administrative law counsel.
- (3) All agreements, stipulations, amendments, or other matters resulting from the prehearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.

(m) Pre-hearing conferences or administrative hearings conducted before a majority of Board members shall be held in Wake County or, by mutual consent in another location when a majority of the Board has convened in that location for the purpose of conducting business. For those proceedings conducted by an Administrative Law Judge the venue will be determined in accordance with G.S. 150B-38(e). All hearings conducted by the Board of Nursing shall be open to the public.

(n) The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a

licensee, in preparation for, or in the conduct of, a contested case.

- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.
- (2) Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall include the following:
 - (A) the full name and home or business address of all persons to be subpoenaed; and
 - (B) the identification, with specificity, of any documents or information being sought.
- (3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.
- (4) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.

(o) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Prehearing motions will be heard at a prehearing conference or at the contested case hearing prior to the commencement of testimony. The designated administrative law counsel will hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

(p) Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance must be in writing and received in the office of the Board of Nursing no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by Disciplinary Consultant or Executive Director of the Board. All other motions for continuance will be ruled on by the majority of the Board members or Administrative Law Judge sitting at hearing.

(q) All hearings by the Board of Nursing will be conducted by a majority of members of the Board of

Nursing, except as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at the hearing. The Board of Nursing shall designate an administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.

(1) When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of Article 3A, Chapter 150B and 21 NCAC 36 .0217 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.

(2) In the event that any party or attorney or other representative of a party engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.

(3) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Board of Nursing and the designated administrative law counsel shall receive the additional testimony. In the event that new members of the Board or a different administrative law counsel must participate, a copy of the transcript of the hearing will be provided to them prior to the receipt of the additional testimony.

(r) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. Chapter 8C shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

(1) Sworn affidavits may be introduced by mutual agreement from all parties.

(2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until

such time that they have completed their testimony and have been released.

(s) Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are available upon request from the Board of Nursing and will be supplied at a reasonable cost.

Statutory Authority G.S. 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 150B-3(c); 150B-11; 150B-14; 150B-38 through 150B-42.

.0218 LICENSURE WITHOUT EXAMINATION (BY ENDORSEMENT)

(a) The Board shall provide an application form which the applicant who wishes to apply for licensure without examination (by endorsement) must complete in its entirety.

(1) The applicant for licensure by endorsement as a registered nurse shall show evidence of:

(A) completion of a nursing program designed to prepare a person for registered nurse licensure which was approved by the jurisdiction of original licensure;

(B) attainment of a standard score equal to or exceeding 350 on each test in the State Board Test Pool Examination administered prior to July 1982; or a standard score of 1600 on the licensing examination developed by the National Council of State Boards of Nursing, Inc. beginning in July 1982 and up to and including the July 1988 examination; or beginning in February 1989, a result of "PASS". An exception to this requirement is made for the applicant who was registered in the original state prior to April 1964. Such applicant must have attained the score, on each test in the series, which was required by the state issuing the original certificate of registration;

(C) mental and physical health necessary to competently practice nursing;

(D) unencumbered license in all jurisdictions in which a license is or has ever been held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant will be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36; and

(E) completion of all court conditions resulting from any misdemeanor or felony conviction(s).

(2) The applicant for licensure by endorsement as a licensed practical nurse shall show evidence of:

(A) completion of:

- (i) a program in practical nursing approved by the jurisdiction of original licensure; or
- (ii) course(s) of study within an approved program(s) which is(are) comparable to that required of practical nurse graduates in North Carolina; or
- (iii) approved course of study for military hospital corpsman which is(are) comparable to that required of practical nurse graduates in North Carolina.

The applicant who was graduated prior to July 1956 shall be considered on an individual basis in light of licensure requirements in North Carolina at the time of original licensure;

(B) achievement of a passing score on the State Board Test Pool Examination or the licensing examination developed by the National Council of State Boards of Nursing, Inc. If originally licensed on or after September 1, 1957, and up to and including the April 1988 examination, an applicant for a North Carolina license as a practical nurse on the basis of examination in another state must have attained a standard score equal to or exceeding 350 on the licensure examination. Beginning in October 1988, an applicant must have received a result of "PASS" on the licensure examination. The applicant who was licensed prior to September 1, 1957 must have attained the score which was required by the jurisdiction issuing the original certificate of registration;

(C) mental and physical health necessary to competently practice nursing;

(D) unencumbered license in all jurisdictions in which a license is or has ever been held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant shall be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36; and

(E) completion of all court conditions resulting from any misdemeanor or felony conviction(s).

~~(b) The North Carolina Board of Nursing shall require applicants for licensure by endorsement to provide proof of secondary education achievement only if deemed necessary for identification.~~

~~(b) (e) Graduates of Canadian nursing programs who have been A nurse educated and licensed in Canada is eligible for North Carolina licensure on the basis of the Canadian Nurses' Association Test Service Examination (CNATS) written in the English language are eligible to apply for registration by endorsement if the nurse has:~~

~~provided the applicant has not failed the examination developed by the National Council of State Boards of Nursing, Inc.~~

- (1) proof of education in a Canadian School of Nursing;
- (2) proof of passing the Canadian Nurses Association Test Service Examination (CNATS) written in the English language. An exception to this requirement is made for the applicant who was registered by Canadian province examination written in the English language prior to CNATS or SBTPE, and has worked in nursing within the past five years or has completed a Board approved refresher course;
- (3) not failed the examination developed by the National Council of State Boards of Nursing, Inc.;
- (4) mental and physical health necessary to competently practice nursing;
- (5) unencumbered license in all jurisdictions which a license is or has ever been held; and
- (6) completed all court conditions resulting from any misdemeanor or felony conviction(s).

(c) ~~(d)~~ A nurse educated and licensed outside the United States and who does not qualify under Paragraph (b) of this Rule is eligible for North Carolina licensure by endorsement if the nurse has:

- (1) proof of education as required by the Board or a certificate issued by the Commission on Graduates of Foreign Nursing Schools; ~~and~~
- (2) ~~proof of passing~~ passed the licensing examination developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction; ~~An exception to this requirement is made for the applicant who was registered by Canadian province examination written in the English language prior to CNATS or SBTPE, and has worked in nursing within the past five years or has completed a Board approved refresher course.~~
- (3) mental and physical health necessary to competently practice nursing;
- (4) unencumbered license in all jurisdictions in which a license is or has ever been held; and
- (5) completed all court conditions resulting from any misdemeanor or felony conviction(s).

(d) ~~(e)~~ When completed application, evidence of current license in another jurisdiction, and fee are received in the Board office, a temporary license may be issued to the applicant. Employer references may be requested to validate competent behavior to practice nursing.

(e) ~~(f)~~ Facts provided by the applicant and the Board of Nursing of original licensure are compared to confirm the identity and validity of the applicant's credentials. Status in other states of current licensure is verified.

When eligibility is determined, a certificate of registration and a current license for the remainder of the biennial period are issued.

Statutory Authority G.S. 90-171.23(b); 90-171.32; 90-171.33; 90-171.37.

.0219 TEMPORARY LICENSE

The Board may issue a Status P nonrenewable temporary license to persons who have filed a completed application for licensure without examination with correct fee and provided validation of an active license in another jurisdiction. If applicant indicates prior court conviction(s) and/or disciplinary action(s) in another jurisdiction, eligibility for a temporary license will be determined after review of relevant documents.

- (1) The Status P nonrenewable temporary license expires on the lesser of six months or the date a full license is issued or when it is determined the applicant is not qualified to practice nursing in North Carolina.
- (2) Status P temporary license authorizes the holder to practice nursing in the same manner as a fully licensed R.N. or L.P.N., whichever the case may be.
- (3) Holders of valid Status P temporary license shall identify themselves as R.N. Petitioner (R.N.P.) or L.P.N. petitioner (L.P.N.P.), as the case may be, after signatures on records.
- (4) Upon expiration, revocation, or return of the Status P temporary license, the individual is ineligible to practice nursing as described in Item (2) of this Rule.

Statutory Authority G.S. 90-171.33.

.0221 LICENSE REQUIRED

(a) No cap, pin, uniform, insignia or title shall be used to represent to the public that an unlicensed person is a registered nurse or a licensed practical nurse.

(b) A license to practice nursing is not required for the repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practice nurse. Tasks that may be delegated to the Nurse Aide I and Nurse Aide II are established by the Board of Nursing as defined in 21 NCAC 36 .0401 and .0405. Tasks may be delegated to an unlicensed person which:

- (1) frequently recur in the daily care of a client or group of clients;
- (2) are performed according to an established sequence of steps;
- (3) involve little or no modification from one client-care situation to another;
- (4) may be performed with a predictable outcome; and
- (5) do not inherently involve ongoing assess-

ment, interpretation, or decision-making which cannot be logically separated from the procedure(s) itself.

Client-care services which do not meet all of these criteria must be performed by a duly licensed nurse. The restrictions, however, do not apply to care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.

(c) A license to practice nursing is required for implementing any treatment and pharmaceutical regimen which is likely to produce side or toxic effects, allergic reactions, or other unusual effects or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen.

(1) The nurse who assumes responsibility for implementing a treatment and pharmaceutical regimen is accountable for:

- (A) recognizing side effects;
- (B) recognizing toxic effects;
- (C) recognizing allergic reactions;
- (D) recognizing immediate desired effects;
- (E) recognizing unusual and unexpected effects;
- (F) recognizing changes in client's condition that contraindicates continued administration of the medication;
- (G) anticipating those effects which may rapidly endanger a client's life or well-being; and
- (H) making judgments and decisions concerning actions to take in the event such untoward effects occur.

(2) Exceptions to .0221(c)(1) are:

- (A) persons who hold statutory authority to administer medications;
- (B) clients themselves, their families or significant others, or caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required;
- (C) administration of oral nutritional supplements;
- (D) applications of non-systemic, topical skin preparations which have local effects only provided that ongoing, periodic assessment of any skin lesion present is carried out by a person licensed to make such assessments; and
- (E) administration of commonly used cleansing enema solutions or suppositories with local effects only.

(d) Unlicensed nursing students enrolled in out-of-state nursing education programs who are requesting utilization of North Carolina clinical facilities, shall be allowed such experiences following approval by the Board of Nursing or its designee. Upon receiving such a request,

the chief nurse administrator of a North Carolina clinical facility contacted by an out-of-state nursing education program seeking nursing student clinical education experiences in North Carolina shall provide the Board with the following at least 60 days prior to the start of the requested experience prior to receiving approval for accepting the students:

- (1) letter of request for approval to provide the clinical offering;
- (2) course description, which includes course objectives, content outline, grading criteria for the course, and curriculum pattern which lists all courses required and placement of this course in the curriculum;
- (3) names of faculty members responsible for coordinating the student's experiences;
- (4) documentation that the nursing program is currently approved by the Board of Nursing or other appropriate approval bodies in the state in which the parent institution is located;
- (5) proposed starting and completion dates for the requested clinical experiences;
- (6) criteria used for selection of the students for the clinical experience in North Carolina;
- (7) number of students to be placed in the facility;
- (8) units for placement and number of students on each unit;
- (9) RN faculty or preceptor qualification criteria with vitae, including NC RN license numbers of those working with the students;
- (10) signed contract between nursing program and clinical facility indicating ratio will not be greater than 1:10 faculty to student ratio for groups of students or 1:2 preceptor to student if preceptor arrangement is proposed;
- (11) written statement from chief nursing administrator indicating the proposed clinical experience does not conflict with clinical unit commitment to approved North Carolina nursing programs who have contracts with the facility;
- (12) evidence that all students involved in the proposed clinical experience are in good academic standing; and
- (13) plans that ensure timely communications between the coordinating faculty from out-of-state program, the participating NC nurses, the chief nursing administrator of the NC clinical facility and the students.

(e) If the approved experience is to continue on an annual basis, written notification shall be submitted annually, by the chief nurse administrator of the NC facility at least 30 days prior to the resumption of the experiences. This notice shall include notification of any changes in the information submitted in material required

in Paragraph (d) of this Rule. Upon review by the Board or its designee, written approval shall be sent to the Chief Nurse administrator of the NC facility and the out-of-state nursing program, within 30 business days of receipt of the materials in the Board office. Copies of the following shall be distributed by the chief nursing administrator of the clinical facility to all students and faculty involved in the clinical experiences:

- (1) North Carolina Nursing Practice Act;
- (2) North Carolina administrative rules and related interpretations regarding the role of the RN, LPN, and unlicensed nursing personnel;
- (3) North Carolina Board developed Guidelines for Utilization of Preceptors; and
- (4) North Carolina Board of Nursing developed Interpretations According to Adopted Categories.

(f) Failure to comply with the requirements in Paragraph (d) of this Rule as established by the North Carolina Board of Nursing shall result in the immediate withdrawal of the Board's approval of the clinical offerings.

Statutory Authority G.S. 90-171.23(b); 90-171.39; 90-171.43.

.0225 COMPONENTS OF NURSING PRACTICE FOR THE LICENSED PRACTICAL NURSE

(a) The responsibilities for performing delegated nursing activities which any licensed practical nurse can safely accept are determined by the variables in each nursing practice setting. These variables include:

- (1) the nurse's own qualifications in relation to client need and plan of nursing care, including:
 - (A) basic educational preparation; and
 - (B) the knowledge and skills subsequently acquired through continuing education and practice;
- (2) the degree of supervision by the registered nurse consistent with Subparagraph (d)(3) of this Rule;
- (3) the stability of each client's clinical condition;
- (4) the complexity and frequency of nursing care needed by each client or client group;
- (5) the accessible resources; and
- (6) established policies, procedures, practices, and channels of communication which lend support to the types of nursing services offered.

(b) Assessment is an ongoing process and consists of participation in the determination of nursing care needs based upon collection and interpretation of data relevant to the health status of a client.

- (1) collection of data consists of obtaining data

from relevant sources regarding the biological, psychological, social and cultural factors of the client's life and the influence these factors have on health status, according to structured written guidelines, policies and forms, and includes:

- (A) observations of appearance and behavior;
 - (B) measurements of physical structure and physiologic function; and
 - (C) information regarding available resources.
- (2) interpretation of data is limited to:
- (A) participation in the analysis of collected data by recognizing existing relationships between data gathered and a client's health status and treatment regimen; and
 - (B) determining a client's need for immediate nursing interventions based upon data gathered regarding the client's health status, ability to care for self, and treatment regimen consistent with Subparagraph (a)(6) of this Rule.

(c) Planning nursing care activities includes participation in the identification of client's needs related to the findings of the nursing assessment. Components of planning include:

- (1) participation in making decisions regarding implementation of nursing intervention and medical orders and plan of care through the utilization of assessment data;
- (2) participation in multidisciplinary planning by providing resource data; and
- (3) identification of nursing interventions for review by the registered nurse.

(d) Implementation of nursing activities consists of delivering nursing care according to an established health care plan and as delegated by the registered nurse or other person(s) authorized by law as specified in G.S. 90-171.20(8)(c).

- (1) Nursing activities and responsibilities which may be delegated to the licensed practical nurse include:
 - (A) procuring resources;
 - (B) implementing nursing interventions and medical orders consistent with Paragraph (c) of 21 NCAC 36 .0221;
 - (C) performing nursing interventions;
 - (D) recognizing responses to nursing interventions;
 - (E) modifying immediate nursing interventions based on changes in a client's status; and
 - (F) delegating specific nursing tasks as outlined in the plan of care and consistent with Subparagraph (d)(2) of this Rule, and 21 NCAC 36 .0401.
- (2) The licensed practical nurse may participate, consistent with 21 NCAC 36 .0224(d)(6), in implementing the health care plan by delegat-

ing nursing care activities to other licensed practical nurses and unlicensed personnel qualified to perform such activities and providing all of the following criteria are met:

- (A) validation of qualifications of personnel to whom nursing activities may be delegated;
 - (B) continuous availability of a registered nurse for supervision consistent with 21 NCAC 36 .0224(i) and Subparagraph (d)(3) of this Rule;
 - (C) accountability maintained by the licensed practical nurse for responsibilities accepted, including nursing care given by self and by all other personnel to whom such care is delegated;
 - (D) participation by the licensed practical nurse in on-going observations of clients and evaluation of clients' responses to nursing actions; and
 - (E) provision of supervision limited to the validation that tasks have been performed as delegated and according to established standards of practice.
- (3) the degree of supervision required for the performance of any delegated nursing activity by the licensed practical nurse when implementing nursing care is determined by variables which include, but are not limited to:
- (A) educational preparation of the licensed practical nurse, including both the basic educational program and the knowledge and skills subsequently acquired by the nurse through continuing education and practice;
 - (B) stability of the client's clinical condition, which involves both the predictability and rate of change. When a client's condition is one in which change is highly predictable and would be expected to occur over a period of days or weeks rather than minutes or hours, the licensed practical nurse participates in care with minimal supervision. When the client's condition is unpredictable or unstable, the licensed practical nurse participates in the performance of the task under close supervision of the registered nurse or other person(s) authorized by law to provide such supervision;
 - (C) complexity of the nursing task which is determined by depth of scientific body of knowledge upon which the action is based and by the task's potential threat to the client's well-being. When a task is complex, the licensed practical nurse participates in the performance of the task under close supervision of the registered nurse or

other person(s) authorized by law to provide such supervision;

- (D) the complexity and frequency of nursing care needed by a given client population;
- (E) the proximity of clients to personnel;
- (F) the qualifications and number of staff;
- (G) the accessible resources; and
- (H) established policies, procedures, practices and channels of communication which lend support to the types of nursing services offered.

(e) Evaluation, a component of implementing the health care plan, consists of participation in determining the extent to which desired outcomes of nursing care are met and in planning for subsequent care. Components of evaluation by the licensed practical nurse include:

- (1) collecting evaluative data from relevant sources according to written guidelines, policies and forms;
- (2) recognizing the effectiveness of nursing interventions; and
- (3) proposing modifications to the plan of care for review by the registered nurse or other person(s) authorized by law to prescribe such a plan.

(f) Reporting and recording are those communications required in relation to the aspects of nursing care for which the licensed practical nurse has been delegated responsibility.

- (1) reporting means the communication of significant information to other persons responsible for or involved in the care of the client. The licensed practical nurse is accountable for:

- (A) directing the communication to the appropriate person(s) and consistent with established policies, procedures, practices and channels of communication which lend support to types of nursing services offered;
- (B) communicating within a time period which is consistent with the client's need for care;
- (C) evaluating the nature of responses to information reported; and
- (D) determining whether further communication is indicated.

- (2) recording means the documentation of all significant information on the appropriate client record, nursing care plan or other documents. This documentation must:

- (A) be pertinent to the client's health care including client's response to care provided;
- (B) accurately describe all aspects of nursing care provided by the licensed practical nurse;
- (C) be completed within a time period consistent with the client's need for care;

- (D) reflect the communication of significant information to other persons; and
- (E) verify the proper administration and disposal of controlled substances.

(g) Collaborating involves communicating and working cooperatively in implementing the health care plan with individuals whose services may have a direct or indirect effect upon the client's health care. As delegated by the registered nurse or other person(s) authorized by law, the licensed practical nurse's role in collaborating in client care includes:

- (1) participating in planning and implementing nursing or multidisciplinary approaches for the client's care;
- (2) seeking and utilizing appropriate resources in the referral process; and
- (3) safeguarding confidentiality.

(h) ~~Reinforcing Teaching~~ teaching and counseling ~~involve involves reinforcing participating in~~ those activities for clients as planned ~~and initiated~~ by the registered nurse or other person(s) authorized by law. Participation includes:

- (1) providing accurate and consistent information, demonstrations, and guidance to clients, their families or significant others regarding the client's health status and health care according to structured written guidelines, policies and forms, and for the purpose of:
 - (A) increasing knowledge;
 - (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
 - (C) promoting the client's ability to make informed decisions.
- (2) collecting evaluative data consistent with Paragraph (e) of this Rule.

Statutory Authority G.S. 90-171.20(7),(8); 90-171.23(b); 90-171.43(4).

.0227 APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

(a) Definitions:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.
- (3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board to whom responsibility is given by G.S. 90-6 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (4) "Nurse Practitioner or NP" means a currently licensed registered nurse approved to

perform medical acts who functions at the direction of or under the supervision of a licensed physician for those medical acts. Only a registered nurse approved by the Medical Board and the Board of Nursing may legally identify oneself as a Nurse Practitioner. It is understood that the nurse practitioner, by virtue of RN licensure, is independently accountable for those nursing acts which he or she may perform.

- (5) "Nurse Practitioner Applicant" means a registered nurse who may function prior to full approval as a Nurse Practitioner in accordance with Part (c)(2)(D) of this Rule.
 - (6) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
 - (7) "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, is held accountable for the on-going supervision and evaluation of the medical acts performed by the nurse practitioner as defined in the site specific written protocols. The primary supervising physician shall assume the responsibility of assuring the Boards that the nurse practitioner is qualified to perform those medical acts described in the site specific written protocols.
 - (8) "Back-up Supervising Physician" means the licensed physician who, by signing the nurse practitioner application for approval, is held accountable for supervising performance of medical acts by the nurse practitioner in accordance with the site specific written protocols when the Primary Supervising Physician is not available.
 - (9) "Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Rule.
 - (10) "Written standing protocols" means the signed and dated set of written practice guidelines maintained at each practice site which describe the prescribing privileges, treatments, tests and procedures that define the scope of the nurse practitioner's medical acts in that setting.
- (b) Scope of Practice. The nurse practitioner is responsible and accountable for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner is educationally prepared and for which competency has been maintained, with physician supervision as described in Paragraph (i) of this Rule. These services include but are not restricted to:
- (1) promotion and maintenance of health;

- (2) prevention of illness and disability;
- (3) diagnosing, treating and managing acute and chronic illnesses;
- (4) guidance and counseling for both individuals and families;
- (5) prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs;
- (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
- (7) evaluating health outcomes.

(c) Nurse Practitioner Approval.

- (1) Qualifications for nurse practitioner approval. A registered nurse must be approved by the Medical Board and the Nursing Board before the individual may practice as a nurse practitioner. The Boards may grant approval to practice as a nurse practitioner to an individual who:

- (A) is currently licensed as a registered nurse by the Board of Nursing;
- (B) has successfully completed an approved educational program as outlined in Paragraph (d) of this Rule;
- (C) has an unrestricted license to practice as a registered nurse and, if applicable, an unrestricted approval to practice as a nurse practitioner unless the Boards consider such condition and agree to approval;
- (D) submits any information deemed necessary to evaluate the application;
- (E) has a primary supervising physician agreement; and
- (F) pays the appropriate fee.

- (2) Application for nurse practitioner approval.

- (A) Application for nurse practitioner approval must be made upon the appropriate forms and must be submitted jointly by the nurse practitioner and primary supervising physician(s).

- (B) Applications for first-time approval in North Carolina shall be submitted to the Nursing Board and then processed by both Boards as follows:

- (i) the Nursing Board will verify compliance with Parts (c)(1)(A) - (D) of this Rule;
- (ii) the Medical Board will verify compliance with Parts (c)(1)(D) - (F) of this Rule; and
- (iii) the appropriate Board will notify applicant of final approval status.

- (C) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North

Carolina:

- (i) addition or change of primary supervising physician shall be submitted to the Medical Board;
- (ii) requests for change(s) in scope of practice shall be submitted to the Nursing Board; and
- (iii) the appropriate Board will notify applicant of final approval status.

- (D) Interim status for nurse practitioner applicant may be granted as follows:

- (i) a registered nurse who is a new graduate of an approved nurse practitioner educational program as set forth in Paragraph (d) of this Rule; or
- (ii) a registered nurse seeking first time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and who meets the nurse practitioner educational requirement as set forth in Paragraph (d) of this Rule; and

- (iii) the Nursing Board has issued interim approval with the following limitations:

- (I) no prescribing privileges;
- (II) physician on-site for appropriate ongoing supervision, review and countersigning of notations of medical acts in all patient charts within 24 hours of nurse practitioner applicant-patient contact; and
- (III) may not exceed period of six months.

- (E) The registered nurse who was previously approved to practice as a nurse practitioner in this state shall:

- (i) meet the nurse practitioner approval requirements as stipulated in Parts (C), (A), (C) - (F) of this Paragraph;
- (ii) complete the appropriate application; and
- (iii) receive notification of approval from the appropriate Board.

- (F) If for any reason a nurse practitioner discontinues working in the approved supervision physician(s) arrangement, the Boards shall be notified in writing and the nurse practitioner's approval shall automatically terminate or be placed on an inactive status until such time as a new application is approved in accordance with this Subchapter.

- (d) Requirements for Approval of Nurse Practitioner Educational Programs.

- (1) The Joint Subcommittee shall establish the requirements for approval of nurse practitioner

- ner education programs.
- (2) A nurse practitioner applicant must provide to the Board of Nursing evidence of successful completion of a course of formal education which contains a core curriculum including 400 contact hours of didactic education and 400 contact hours of preceptorship or supervised clinical experience.
- (A) The core curriculum shall contain as a minimum the following components:
- (i) health assessment and diagnostic reasoning including:
 - (I) historical data;
 - (II) physical examination data;
 - (III) organization of data base;
 - (ii) pharmacology;
 - (iii) pathophysiology;
 - (iv) clinical management of common health care problems and diseases related to:
 - (I) respiratory system;
 - (II) cardiovascular system;
 - (III) gastrointestinal system;
 - (IV) genitourinary system;
 - (V) integumentary system;
 - (VI) hematologic and immune systems;
 - (VII) endocrine system;
 - (VIII) musculoskeletal system;
 - (IX) infectious diseases;
 - (X) nervous system;
 - (XI) behavioral, mental health and substance abuse problems;
 - (v) clinical preventative services including health promotion and prevention of disease;
 - (vi) client education related to Parts (b)(1)(D) and (E) of this Rule; and
 - (vii) role development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.
- (B) Nurse practitioner applicants who may be exempt from components of the core curriculum requirements listed in Subparagraph (b)(1) of the Rule are:
- (i) Any nurse practitioner approved in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.
 - (ii) A nurse practitioner certified by a national credentialing body approved by the Nursing Board who also provides evidence of satisfying Parts (b)(1)(A) - (C) of this Rule shall be exempt from core curriculum requirements in Parts (b)(1)(D) - (G) of this Rule. Evidence of satisfying Parts (b)(1)(A) - (C) of this Rule shall include, but may not be limited to:
 - (I) a narrative of course content; and
 - (II) contact hours.
 - (iii) A nurse practitioner applicant, whose formal education does not meet all of the stipulations in Subparagraph (d)(2) of this Rule, may appeal to the Board of Nursing on the basis of other education and experience.
- (e) Annual Renewal.
- (1) Each registered nurse who is approved as a nurse practitioner in this state will, upon notification from the Medical Board, annually renew said approval by:
 - (A) Verifying current RN licensure;
 - (B) Submitting the fee required in Paragraph (1) of this Rule;
 - (C) Completing the renewal form; and
 - (D) Providing documentation of the required number of hours of Continuing Education as stipulated in Paragraph (f) of this Rule.
 - (2) If the nurse practitioner has not renewed within 30 days of renewal date, set by the Medical Board, the approval to practice as a nurse practitioner will lapse.
- (f) Continuing Education (CE). In order to maintain nurse practitioner approval to practice beginning no sooner than two years after initial approval has been granted, the nurse practitioner must earn 30 hours of continuing education every two years. At least three hours of continuing education every two years shall be the study of the medical and social effects of substance abuse including abuse of prescription drugs, controlled substances, and illicit drugs. Continuing Education hours are those hours for which American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME) have granted approval. Documentation must be maintained by the nurse practitioner at each practice site and made available upon request to either Board.
- (g) Inactive Status.
- (1) Any nurse practitioner who wishes to place his or her approval on an inactive status may notify the Boards by completing the form supplied by the Boards;
 - (2) The registered nurse with inactive nurse practitioner status shall not practice as a nurse practitioner.
 - (3) The registered nurse with inactive nurse practitioner status who reapplies for approval to practice shall be required to meet the qualifications for approval as stipulated in Parts (c)(1)(A), (c)(1)(C) - (E) and Subparagraph (c)(2) of this Rule.
- (h) Prescribing Authority.
- (1) The prescribing stipulations contained in this Paragraph apply to writing prescriptions and ordering the administration of medications;

- (2) Prescribing and dispensing stipulations are as follows:
 - (A) Drugs and devices that may be prescribed by the nurse practitioner in each practice site must be included in the written standing protocols as outlined in Paragraph (i), Subparagraph (2) of this Rule.
 - (B) Controlled Substances (Schedules 2, 2N, 3, 3N 4, 5) defined by the State and Federal Controlled Substances Acts may be prescribed or ordered as established in written standing protocols, providing all of the following restrictions are met:
 - (i) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
 - (ii) dosage units for schedules 2, 2N, 3 and 3N are limited to a one week's supply, except Dextroamphetamine, Methylphenidate and Pemoline for the treatment of Attention Deficit Disorder (ADD) which are limited to a 30 day supply; and
 - (iii) the prescription or order for schedules 2, 2N, 3 and 3N may not be refilled.
 - (C) The nurse practitioner may prescribe a drug not included in the site-specific written standing protocols only as follows:
 - (i) upon a specific written or verbal order obtained from the supervising physician before the prescription or order is issued by the nurse practitioner; and
 - (ii) the verbal or written order as described in Subpart (h)(2)(C)(i) of this Rule must be entered into the patient record and signed by the nurse practitioner with a notation that is issued on the specific order of the supervising physician.
 - (D) Refills may be issued for a period not to exceed one year except for schedules 2, 2N, 3 and 3N controlled substances which may not be refilled.
 - (E) Each prescription must be noted on the patient's chart and include the following information:
 - (i) medication and dosage;
 - (ii) amount prescribed;
 - (iii) directions for use;
 - (iv) number of refills; and
 - (v) signature of nurse practitioner.
 - (F) The prescribing number assigned by the Medical Board to the nurse practitioner must appear on all prescriptions issued by the nurse practitioner.
 - (G) Prescription Format:
 - (i) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and prescribing number;
 - (ii) the nurse practitioner assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Paragraph (h) Part (B) of this Rule; and
- (3) The nurse practitioner may obtain approval to dispense the drugs and devices included in the written standing protocols for each practice site from the Board of Pharmacy, and must carry out the function of dispensing in accordance with 21 NCAC 46 .1700, which is hereby incorporated by reference including subsequent amendments of the referenced materials.
 - (i) Physician Supervision. Supervision shall be provided by the approved physician(s) as follows:
 - (1) Availability:
 - (A) The supervising physician shall be continuously available for direct communication by radio, telephone, or telecommunications;
 - (B) The supervising shall be readily available for consultation or referrals of patients from the nurse practitioner; and
 - (C) If the nurse practitioner is to perform duties at a site away from the supervising physician, the application must clearly specify the circumstances and the supervisory arrangements.
 - (2) Written Standing Protocols:
 - (A) Written standing protocols approved and signed by both the supervising physician(s) and the nurse practitioner shall be maintained in each practice site;
 - (B) The written standing protocols shall include the drugs, devices, medical treatments, tests and procedures that be prescribed, ordered and implemented by the nurse practitioner consistent with Paragraph (h) of this Rule, and which are appropriate for the diagnosis and treatment of the most commonly encountered health problems in that practice setting;
 - (C) The written standing protocols shall include a pre-determined plan for emergency services;
 - (D) The written standing protocols shall specify the process by which the nurse practitioner shall refer a patient to a physician other than an approved supervising physician; and
 - (E) The nurse practitioner must be prepared to demonstrate upon request to a member of

either the Board of Nursing or the Medical Board, or an agent, the ability to perform medical acts as outlined in the site-specific written standing protocols.

(3) Countersigning of Medical Acts:

(A) The maximum time interval between the nurse practitioner's contact with the patient and medical record review and countersigning of medical acts by the supervising physician is seven days for outpatient (clinic/office) nurse practitioner-patient contacts.

(B) The time interval or countersigning of notations of medical acts in the medical records of inpatients (hospital, long-term care institutions) by the supervising physician must comply with the rules and regulations of the institution, but at a minimum:

- (i) the initial workup, medical orders and treatment plan, must be countersigned within seven days of the time of the nurse practitioner-patient contact; and
- (ii) in the acute inpatient setting, the initial work-up, medical orders and treatment plan must be countersigned and dated within two working days of the nurse practitioner-patient contact.

(C) The time interval between the nurse practitioner-patient contact and countersigning by the supervising physician of the nurse practitioner's notations of medical acts in the medical records of patients in special community-based care programs, such as dialysis and hospice, must comply with the rules and regulations of the specific care program.

(4) Supervising Physicians:

(A) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, cannot be named as a supervising physician.

(B) A physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation if fully licensed and approved to supervise by the Medical Board.

(C) All physicians who may supervise the nurse practitioner in any manner must be approved in accordance with this Subchapter before nurse practitioner supervision occurs.

(j) Method of Identification. The nurse practitioner shall wear an appropriate name tag spelling out the words "Nurse Practitioner."

(k) Disciplinary Action. The approval of a nurse

practitioner may be restricted, denied or terminated by the Medical Board and the registered nurse license may be restricted, denied, or terminated by the Nursing Board, if after due notice and hearing in accordance with provisions of Article 3A of G.S. 150B, the appropriate Board shall find one or more of the following:

- (1) that the nurse practitioner has held himself out or permitted another to represent him as a licensed physician;
- (2) that the nurse practitioner has engaged or attempted to engage in the performance of medical acts other than at the direction of, or under the supervision of, a physician licensed by the Medical Board who is approved by the Board of to be that nurse practitioner's supervising physician;
- (3) that the nurse practitioner has performed or attempted to perform medical acts not approved in the site-specific standing protocols or for which the nurse practitioner is not qualified by education and training to perform;
- (4) that the nurse practitioner has been convicted in any court of a felony or other criminal offense;
- (5) that the nurse practitioner is adjudicated mentally incompetent or that the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner; or
- (6) that the nurse practitioner has failed to comply with any of the provisions of this Rule.

(l) Fees:

- (1) An application fee of one hundred dollars (\$100.00) must be paid at the time of initial application for approval and each subsequent application for approval to practice. The one hundred dollar (\$100.00) application fee shall be equally divided between the Board of Nursing and the Medical Board. No other fees are shared.
- (2) The fee for annual renewal of approval, due July 1, is fifty dollars (\$50.00).
- (3) No portion of any fee in this Rule is refundable.

Statutory Authority G.S. 90-171.20(7); 90-171.23(b); 90-171.23(b)(14); 90-171.23(14); 90-171.36; 90-171.37; 90-171.42.

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

.0318 FACULTY

(a) Both full-time and part-time members shall be considered nursing program faculty. When part-time faculty are utilized, evidence shall exist of their partici-

pation in curriculum implementation and evaluation.

(b) Policies for nursing program faculty members shall reflect those of the institution; however, variations in these policies may be necessary because of the nature of nursing curriculum.

(c) Qualifications for nurse faculty members shall be stated and reflect knowledge and experiences in clinical nursing and teaching which are appropriate for assigned responsibilities.

(d) Faculty members who teach non-nursing courses required in the nursing curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate.

(e) Each nurse faculty member shall hold a current unrestricted license as a registered nurse in North Carolina. The program director is held accountable for validating and documenting current registered nurse licensure in North Carolina.

(f) Each nurse faculty member shall hold a baccalaureate in nursing or a baccalaureate with a major in nursing. Exceptions are:

- (1) the individual who holds a master's degree in nursing and a baccalaureate in another discipline;
- (2) the individual employed as a faculty member prior to January 1, 1984, who holds a baccalaureate in another discipline. This exception applies to continuing employment in the current setting.

(g) Each nurse faculty member employed after January 1, 1984, shall have had a minimum of two years prior employment in direct patient care. Each nurse faculty member employed after January 1, 1989, shall have had a minimum of two year's prior employment in direct patient care as a registered nurse. Each nurse faculty member employed after July 1, 1992, shall have had a minimum of two calendar year's prior full-time employment or the equivalent in clinical nursing practice as a registered nurse.

(h) In addition to all qualifications for nurse faculty members, the nurse director of a practical nurse education program employed as such after January 1, 1984, shall have had at least two year's full-time experience teaching in nursing program(s).

(i) In addition to all qualifications for nurse faculty members, the nurse director of a program preparing individuals for registered nurse practice shall hold a baccalaureate and a master's degree, one of which shall be in nursing; and if employed after January 1, 1984, shall have had at least two year's full-time experience teaching at or above the academic level of the program. For purposes of this Standard, associate degree and diploma nursing program levels are considered comparable.

(j) In addition to all qualifications for nurse faculty members, the nurse faculty member in a program preparing individuals for registered nurse practice who

has primary responsibility, designated by the program, for coordinating the planning, implementation, and evaluation, of each major clinical nursing course shall hold a master's degree. This nurse faculty member shall also have had a minimum of one academic year of full-time teaching experience in a nursing program.

(k) In addition to all qualifications for nurse faculty members, the nurse faculty member in a program preparing individuals for practical nurse licensure who has primary responsibility, designated by the program, for coordinating the planning, implementation and evaluation of each major clinical nursing course, shall have had a minimum of one academic year of full-time teaching experience in a nursing program.

(l) The nurse faculty members shall have the appropriate authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

(m) The nurse faculty members shall be sufficient in number to implement the curriculum as demanded by the course objectives, the levels of the students, and the nature of the learning environment. The faculty-student ratio in clinical areas shall depend upon the level of students, the acuity of patients, and the average daily census in the unit. The ratio shall be 1:10 or less. Request to exceed the 1:10 ratio shall be submitted to the Board or its' designated representatives for approval prior to implementation. Request may be approved for one academic term only.

(n) There shall be written annual evaluation of each nurse faculty member by the program director or a designee; and evidence of written evaluation of the program director by an immediate supervisor according to the institutional policy.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

.0320 STUDENTS

(a) Students in nursing programs shall meet requirements established by the controlling institution. Additional requirements may be stipulated for nursing students because of the nature and legal responsibilities of nursing education and nursing practice.

(b) Admission requirements and practices shall be clearly stated and published by the controlling institution and must include assessment of:

- (1) ~~physical and emotional health that would provide evidence that is indicative of the applicant's ability to provide safe nursing care to the public; and~~ record of high school graduation, high school equivalent, or earned credits from an approved post-secondary institution; and
- (2) achievement potential through the use of previous academic records and pre-entrance

examination cut-off scores that are consistent with curriculum demands and scholastic expectations; and

- (3) ~~record of high school graduation, high school equivalent, or earned credits from an approved post-secondary institution; physical and emotional health that would provide evidence that is indicative of the applicant's ability to provide safe nursing care to the public.~~

Initial admission may be based on Subparagraphs (b)(1) and (2) of this Rule and any other institutional requirements; however, final admission must be contingent upon Subparagraph (b)(3) of this Rule.

(c) The number of students enrolled in nursing courses shall not exceed the maximum number approved by the Board.

(d) Published policies and practices shall exist that provide for identification and dismissal of students who present physical, emotional, or behavioral problems which conflict with safety essential to nursing practice and do not respond to appropriate treatment or counseling within a reasonable period of time.

- (1) ~~present physical or emotional problems that do not respond to appropriate treatment or counseling within a reasonable period of time; or~~

- (2) ~~demonstrate behavior which conflicts with safety essential to nursing practice.~~

(e) Criteria for progression through a program shall clearly define the level of performance required to pass each course in the curriculum, the level at which failure of the course is determined, and the level of performance in prerequisite courses required for progression to subsequent courses or levels. These criteria shall apply to both theoretical and clinical components of nursing courses.

(f) Program objectives shall be consistent with components of basic nursing practice as legally defined for the licensure level.

(g) Implementation of the nursing program shall result in no less than an annual 75 percent pass rate on first writing of the licensure examination for the calendar year ending December 31.

(h) Policies for transfer of credits or for admission to advanced placement shall be stated and must provide that:

- (1) general admission, progression, and graduation requirements of the nursing program shall apply to the applicant; and
- (2) the nursing program shall determine the total number of nursing courses or credits allowed for advanced placement.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

.0322 FACILITIES

(a) Campus facilities shall be appropriate in type, number, and accessibility for the total needs of the program.

- (1) Classrooms, practice laboratories, audio and video tutorial laboratories, and conference rooms shall be sufficient in size, number, and types for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and equipment must be suitable.

- (2) Office and conference space for nursing program faculty members shall be appropriate and available for uninterrupted work and privacy including conferences with students.

- (3) The library facilities shall be readily accessible to students and faculty, and must offer adequate resources and services.

- (A) Active library services shall include a librarian and a system of cataloging.

- (B) A system of acquisition and deletion shall exist that ensures currency and appropriateness of holdings including audio and video tutorial resources that support implementation of the nursing curriculum.

- (C) Library space for use by students and faculty shall be adequate to accommodate the program.

- (D) Library hours shall meet the needs of the students in the program.

(b) Other facilities shall support the program.

- (1) Clinical agencies shall include:

- (A) hospital(s) that provide inpatient care in medicine, surgery, obstetrics, pediatrics, and geriatrics;

- (B) agencies serving patients across the lifespan who present problems arising from common pathological or maturational conditions;

- (C) patient census in hospitals and agencies with sufficient numbers and varieties of conditions, including varying degrees of acuity, to accommodate the number of students and provide learning experiences mandated by the curriculum.

- (2) Clinical agencies for programs leading to registered nurse licensure shall include psychiatric and mental health services with sufficient patient census in community sites or inpatient services at which psychiatric or mental health care is a primary focus. Patient census must be representative of the range of DSM III diagnoses.

- (3) Clinical agencies for baccalaureate nursing programs shall include public or community health services within voluntary or official agencies.

- (4) Each clinical agency shall:

- (A) have approval of the Board;
 - (B) have a registered nurse with authority and responsibility for administration of nursing within the agency;
 - (C) have staffing and written operational policies and procedures designed to ensure the legal practice of nursing, as defined in Articles 9A and 9C, Chapter 90 of the General Statutes (Nursing Practice Act) and Administrative Code, Title 21, Chapter 36, and demonstrates compliance with agency policies at a rate of no less than 85 percent;
 - (D) make records of those served available for use by faculty and students;
 - (E) have equipment and supplies that are suitable in quantity and quality, properly maintained, and available for use; and
 - (F) have a current contractual agreement with the program if the clinical resource is not a constituent of the parent institution.
- (5) The clinical agencies shall file with the Board such records, data, and reports as may be required in order to furnish information regarding policies, position descriptions, and census and staffing reports to ensure the legal practice of nursing and that are reflective of opportunities for effective learning.
 - (6) Schedules for use by one or more nursing programs shall demonstrate feasibility for such use and reflect cooperative planning by the programs and the agency.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

CHAPTER 54 - BOARD OF PRACTICING PSYCHOLOGISTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to adopt rule cited as 21 NCAC 54 .1707; amend 21 NCAC 54 .1701 and .2704 - .2706.

Proposed Effective Date: December 1, 1995.

A Public Hearing will be conducted at 9:00 a.m. on September 22, 1995 at the Sheraton Inn Winston-Salem, 5790 University Parkway, Winston-Salem, N.C.

Reason for Proposed Action:

21 NCAC 54 .1701 - Amend information required for making application for licensure.

21 NCAC 54 .1707 - Establish requirements for making application under Senior Psychologist provision.

21 NCAC 54 .2704 - 2706 - Amend requirements for health services provider certification.

Comment Procedures: Comments may be submitted in writing or in person at the public hearing or in writing prior to October 3, 1995 to Martha Storie, Executive Director, N.C. Psychology Board, 895 State Farm Road, Suite 102, Boone, NC 28607. Anyone wishing to submit oral comments at the hearing is requested to file a written statement in the Board's office no later than 3 days prior to the hearing, confirming that he/she wishes to speak at the hearing. Anyone presenting oral comments at the hearing is requested to provide a written statement of such comments to the Board when signing in on the morning of the hearing.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SECTION .1700 - APPLICATION FOR LICENSURE

.1701 INFORMATION REQUIRED

(a) Except as provided in Rule .1707 of this Section, ~~the~~ ~~The~~ information required for each applicant consists of:

- (1) typed, or legibly printed, notarized application form and application fee;
- (2) official, graduate college transcripts sent directly to the Board by the training institutions(s);
- (3) completed information forms from present and past supervisors;
- (4) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist;
- (5) evidence of being 18 years of age and of good moral character;
- (6) verification and report on the status of licensure, including any disciplinary action which is pending or has been taken, information ~~forms~~ sent directly from any other states and provinces state or province in which the applicant has applied for a license or has been licensed, if applicable;
- (7) official report of any previous score obtained on the Examination for Professional Practice in Psychology sent directly to the Board from the Professional Examination Service, if applicable; and
- (8) additional documentation regarding educational credentials described in ~~21 NCAC 54 .1801(b) and (c) Practicing Psychologist Requirements as of June 30, 1987, 21 NCAC 54 .1802(b) Psychological Associate, and 21 NCAC 54 .1803(b) Practicing Psychologist Requirements as of July 1, 1989, if applicable.~~

(b) An application must contain all requested materials to be complete. An incomplete application is active for ~~six~~ three months from the date of application. At the end of such time, if still incomplete, the application is void, the applicant is deemed to have discontinued the application process, and the applicant must totally reapply.

Statutory Authority G.S. 90-270.4(h); 90-270.5(a); 90-270.9; 90-270.11(a),(b); 90-270.13(a); 90-270.15; 150B-11(1).

.1707 SENIOR PSYCHOLOGIST

(a) A senior psychologist is someone who has achieved longevity in the practice of psychology and has demonstrated exemplary professional behavior over the course of his/her career, as defined in this Rule.

(b) To be approved for licensure at the Licensed Psychologist level on the basis of senior psychologist status, an applicant shall meet all of the following requirements:

- (1) has been licensed for 15 continuous years at the doctoral level in one or more jurisdictions which are members of the Association of State and Provincial Psychology Boards, during which time, and in which jurisdiction(s), he/she has practiced psychology for a minimum of 10 years on at least a half-time (i.e., 20 hours per week) basis;
- (2) has had no disciplinary sanction during his/her entire period of licensure in any jurisdiction;
- (3) has no unresolved complaint in any jurisdiction at the time of application in North Carolina; and
- (4) passes the North Carolina State Written Examination.

(c) To be approved for licensure at the Licensed Psychological Associate level on the basis of senior psychologist status, an applicant shall meet all of the following requirements:

- (1) has been licensed for 15 continuous years at the masters level in one or more jurisdictions which are members of the Association of State and Provincial Psychology Board, during which time, and in which jurisdiction(s), he/she has practiced psychology for a minimum of 10 years on at least a half-time (i.e., 20 hours per week) basis;
- (2) has had no disciplinary sanction during his/her entire period of licensure in any jurisdiction;
- (3) has no unresolved complaint in any jurisdiction at the time of application in North Carolina; and
- (4) passes the North Carolina State Written Examination.

(d) The information required for each applicant consists of:

- (1) typed, or legibly printed, notarized application form, including an affidavit which attests to meeting the requirements specified in Paragraph (b) or (c) of this Rule;
- (2) official, graduate college transcripts sent directly to the Board by the training institution(s);
- (3) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist; and
- (4) verification and report on the status of licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly from any other state or province in which the applicant has applied for a license or has been licensed.

(e) An application must contain all requested materials to be complete. An incomplete application is active for three months from the date of application. At the end of such time, if still incomplete, the application is void, the applicant is deemed to have discontinued the application process, and the applicant must totally reapply.

Statutory Authority G.S. 90-270.4(h); 90-270.5(a); 90-270.9; 90-270.13(a),(e).

SECTION .2700 - HEALTH SERVICES PROVIDER CERTIFICATION

.2704 HSP-P REQUIREMENTS

(a) To be certified as a health services provider psychologist (HSP-P), a A licensed psychologist holding permanent North Carolina licensure shall be qualified by education as defined in Paragraph (b) of this Rule and shall have completed two years of supervised experience, of which at least one year shall be post-doctoral. These two years of experience shall meet the criteria specified in Paragraphs (c) and (d) of this Rule, or in Paragraph (e) of this Rule. ~~to be certified as a health services provider psychologist (HSP-P).~~ An applicant shall submit a completed, notarized application form and provide documentation of meeting health services provider requirements.

(b) An applicant shall demonstrate that he/she is qualified ~~Qualified~~ by education to provide health services by meeting one of the following criteria: ~~means a doctoral degree in clinical psychology, counseling psychology, school psychology, or other doctoral degree based on a planned and directed program of studies providing training in the provision of health services in psychology. Qualifying degrees are as follows:~~

- (1) is approved for listing, or is listed, ~~those held by individuals who are accepted for listing in the National Register of Health~~

- Service Providers in Psychology;
- (2) ~~is a diplomate those held by individuals who are recognized as diplomates in good standing of the American Board of Professional Psychology in Clinical Psychology, Counseling Psychology, or School Psychology;~~
 - (3) ~~is a graduate from a doctoral program which was those held by graduates from doctoral programs which are fully accredited at the time of the applicant's graduation by the American Psychological Association in Clinical Psychology, Counseling Psychology, School Psychology, or Combined Professional-Scientific Psychology; or and which include an internship accredited by the American Psychological Association;~~
 - (4) ~~has an academic foundation in the provision of health services as defined in Rule .2701(a) of this Section.~~
 - (4) ~~if applying before January 1, 2001, those held by graduates from doctoral programs which are fully accredited at the time of the applicant's graduation by the American Psychological Association in School Psychology and which include an internship meeting the guidelines of the Council of Directors of School Psychology Programs as documented by the program chair;~~
 - (5) ~~those held by graduates who received doctoral degrees prior to 1979 from programs which include course work which demonstrates an academic foundation in the provision of health services as defined in Rule .2701(a) of this Section, and which include the equivalent of a one year supervised internship in an American Psychological Association accredited program providing health services, in a Veterans Administration setting providing health services, or at a site providing health services which was specifically acceptable to the applicant's doctoral training program; or~~
 - (6) ~~those held by graduates from doctoral degree, or from doctoral retraining, programs in psychology at institutions of higher education which include course work which demonstrates an academic foundation in the provision of health services as defined in Rule .2701(a) of this Section, and which include one year of training in an organized health services program meeting all of the following criteria:~~
 - (A) ~~The training shall be a planned and directed program in the provision of health services, in contrast to "on the job" training, and shall provide the trainee with a planned, programmed sequence of training experiences.~~
 - (B) ~~The training site shall have a written statement or brochure which describes its training program and is made available to prospective trainees.~~
 - (C) ~~Trainees shall be designated as "interns," "fellows," or "residents," or hold other designation which clearly indicates training status.~~
 - (D) ~~The training site shall have a minimum of two students who are trainees during the applicant's training period.~~
 - (E) ~~The training shall be completed within 24 months.~~
 - (F) ~~The training shall consist of at least 1500 hours of practice.~~
 - (G) ~~At least 25% of the training shall be spent in the provision of direct health services, as defined in Rule .2701(a) of this Section, to patients or clients seeking assessment or treatment.~~
 - (H) ~~Up to 25% of the training may be comprised of research activities.~~
 - (I) ~~The training site shall have a minimum of two doctorally trained licensed, certified, or license eligible psychologists on the staff as supervisors who have ongoing contact with the trainee.~~
 - (J) ~~The training shall be under the direction of a licensed, certified, or license eligible doctorally trained psychologist who is on the staff of the training site, who approves and monitors the training, who is familiar with the training site's purposes and functions, who has ongoing contact with the trainee, and who agrees to assume responsibility for the quality, suitability, and implementation of the training experience.~~
 - (K) ~~The training shall provide a minimum of two hours per week of individual face to face discussion of the trainee's practice, with the specific intent of overseeing the health services rendered by the trainee. Supervision may be provided in part by psychiatrists, social workers, or other mental health professionals qualified by the training site, but at least 50% of supervision shall be provided by licensed, certified, or license eligible doctorally trained psychologists.~~
 - (L) ~~In addition to individual supervision, the training site shall provide a minimum of two hours per week of instruction which may be met by group supervision, assigned reading, seminars, and similarly constituted organized training experiences.~~
 - (e) ~~An applicant shall demonstrate at least two years~~

of supervised health services experience, of which at least one year shall be postdoctoral, as described in this Paragraph. An applicant meeting the requirements specified in Subparagraph (b)(1) or (b)(2) of this Rule shall be deemed to meet the two year supervised experience requirement. An applicant meeting the internship or organized health services training program requirements specified in Subparagraph (b)(3), (b)(4), (b)(5), or (b)(6) of this Rule, shall be deemed to meet one year of the supervised experience requirement and shall demonstrate an additional year of supervised experience meeting all of the following criteria:

- (1) The experience shall occur after all requirements for the doctoral degree are completed.
- (2) The experience shall consist of a minimum of one calendar year and include 1500 hours of supervised experience.
- (3) The experience shall be completed within a consecutive four year period.
- (4) The supervision shall be for the direct provision of health services in psychology, as defined in Rule .2701(a) of this Section, by the applicant to individuals or groups of clients/patients.
- (5) At least one hour per week of formal, face to face, individual supervision shall have been provided, except that individual supervision provided up until June 1, 1995, may have been provided in two, two hour sessions per month.
- (6) The supervisor shall have been an appropriately licensed or certified psychologist, whose license or certificate was in good standing, in the state where the practice occurred.
- (7) The supervisor, at the time of supervision, shall not have been in a dual relationship with the supervisee, e.g., spouse, other close relative, close personal friend, or therapist.

(c) Except as provided in Paragraph (e) of this Rule, an applicant shall demonstrate one year of supervised experience which meets the following requirements for an organized health services training program:

- (1) The training shall be a planned and directed program in the provision of health services, in contrast to "on the job" training, and shall provide the trainee with a planned, programmed sequence of training experience.
- (2) The training site shall have a written statement or brochure which describes its training program and is made available to prospective trainees.
- (3) Trainees shall be designated as "interns," "fellows," or "residents," or hold other designation which clearly indicates training status.
- (4) The training shall be completed within 24 months.

- (5) The training shall consist of at least 1500 hours of practice.
- (6) At least 25% of the training shall be spent in the provision of direct health services, as defined in Rule .2701(a) of this Section, to patients or clients seeking assessment or treatment.
- (7) Up to 25% of the training may be comprised of research activities.
- (8) There shall be a minimum of two doctorally trained licensed, certified, or license eligible psychologists at the training site as supervisors who have ongoing contact with the trainee.
- (9) The training shall be under the direction of a licensed, certified, or license eligible doctorally trained psychologist who is on the staff of the training site, who approves and monitors the training, who is familiar with the training site's purposes and functions, who has ongoing contact with the trainee, and who agrees to assume responsibility for the quality, suitability, and implementation of the training experience.
- (10) The training shall provide a minimum of two hours per week of individual face-to-face discussion of the trainee's practice, with the specific intent of overseeing the health services rendered by the trainee. Supervision may be provided in part by psychiatrists, social workers, or other mental health professionals qualified by the training site, but at least 50% of supervision shall be provided by licensed, certified, or license-eligible doctorally trained psychologists.
- (11) In addition to individual supervision, the training site shall provide a minimum of two hours per week of instruction which may be met by group supervision, assigned reading, seminars, and similarly constituted organized training experiences.

This specified year of supervised experience may be obtained at a predoctoral level, provided that an additional year of supervised experience as defined in Paragraph (d) of this Rule is obtained at a post-doctoral level. Internships accepted for listing in the National Register of Health Service Providers in Psychology and internships accredited by the American Psychological Association in Clinical Psychology, Counseling Psychology, or School Psychology shall be deemed to meet the requirements in this Paragraph.

(d) An applicant shall demonstrate one year of supervised experience which meets the following requirements:

- (1) The experience shall consist of a minimum of one calendar year and include 1500 hours of supervised experience.

- (2) The experience shall be completed within a consecutive four-year period.
- (3) The supervision shall be for the direct provision of health services in psychology, as defined in Rule .2701(a) of this Section, by the applicant to individuals or groups of clients/patients.
- (4) At least one hour per week of formal, face-to-face, individual supervision shall have been provided, except that individual supervision provided up until June 1, 1995, may have been provided in two, two-hour sessions per month.
- (5) The supervisor shall have been an appropriately licensed or certified psychologist, whose license or certificate was in good standing, in the state where the practice occurred.
- (6) The supervisor, at the time of supervision, shall not have been in a dual relationship with the supervisee, e.g., spouse, other close relative, close personal friend, or therapist.

This specified year of supervised experience may be obtained at a predoctoral level, provided that an additional year of supervised experience as defined in Paragraph (c) of this Rule is obtained at a post-doctoral level.

(e) An applicant who holds a provisional license as a Licensed Psychologist in North Carolina on the effective date of this Rule shall not be required to have had one year of supervised experience which meets the requirements of an organized health services training program as specified in Paragraph (c) of this Rule, but shall have completed two years of supervised experience, of which at least one year shall be post-doctoral, as defined in Paragraph (d) of this Rule.

(f) An applicant who documents that he/she meets any one of the following criteria shall be deemed to meet all requirements of this Rule for certification as a health services provider psychologist (HSP-P):

- (1) is approved for listing, or is listed, in the National Register of Health Service Providers in Psychology;
- (2) is a diplomate in good standing of the American Board of Professional Psychology in Clinical Psychology, Counseling Psychology, or School Psychology;
- (3) is a graduate from a doctoral program which was accredited at the time of the applicant's graduation by the American Psychological Association in Clinical Psychology, Counseling Psychology, School Psychology, or Combined Professional-Scientific Psychology and which included an internship accredited by the American Psychological Association, and who completes a postdoctoral year of supervised experience as defined in either

Paragraph (c) or (d) of this Rule;

- (4) if applying before January 1, 2001, is a graduate from a doctoral program which was fully accredited at the time of the applicant's graduation by the American Psychological Association in School Psychology and which included an internship meeting the guidelines of the Council of Directors of School Psychology Programs as documented by the program chair, and who completes a postdoctoral year of supervised experience as defined in either Paragraph (c) or (d) of this Rule; or
- (5) is a graduate who received a doctoral degree prior to 1979 from a program which included course work which demonstrates an academic foundation in the provision of health services as defined in Rule .2701(a) of this Section, and which included the equivalent of a one year supervised internship in an American Psychological Association accredited program providing health services, in a Veterans Administration setting providing health services, or at a site providing health services which was specifically acceptable to the applicant's doctoral training program, and who completes a postdoctoral year of supervised experience as defined in either Paragraph (c) or (d) of this Rule; or
- (6) is approved for licensure under senior psychologist requirements specified in 21 NCAC 54 .1707 and demonstrates that at least 25% of his/her qualifying practice has been in the provision of direct health services, as defined in Rule .2101(a) of this Section.

(g) (4) An applicant applying under Subparagraph (b)(1) of this Rule, and who has not yet been approved for listing in the National Register of Health Service Providers in Psychology, shall be permitted to file an affidavit verifying that he/she qualifies for listing in the Register. Upon receipt of this affidavit, the Board may issue a health services provider certificate, conditioned upon receipt of a letter from the Register within sixty (60) days of receipt of the affidavit which confirms approval for, or listing in, the Register. An extension of the sixty (60) days may be granted upon showing that additional time is needed for application review by the National Register of Health Service Providers.

(h) (4) An applicant for health services provider certification who knowingly provides false or fraudulent information to the Board with respect to his/her application, or who fails to provide the notification from the National Register of Health Service Providers in Psychology where required, shall be subject to disciplinary action by the Board, including revocation of licensure and the health services provider certificate.

Statutory Authority G.S. 90-270.9; 90-270.15(a)(3); 90-270.15(a)(22); 90-270.20(b).

.2705 HSP-PP REQUIREMENTS

(a) To be certified as a health services provider psychologist (HSP-PP), a ~~A~~ licensed psychologist holding provisional North Carolina licensure shall be qualified by education. ~~to be certified as a health services provider psychologist (provisional) (HSP-PP).~~ An applicant shall submit a completed, notarized application form and provide documentation of meeting health services provider requirements.

(b) An applicant shall demonstrate that he/she is qualified ~~Qualified~~ by education to provide health services by meeting one of the criteria defined in Rule .2704(b) of this Section. ~~means a doctoral degree in clinical psychology, counseling psychology, school psychology, or other doctoral degree based on a planned and directed program of studies providing training in the provision of health services in psychology. Qualifying degrees are as defined in Paragraph (b) of Rule .2704 of this Section.~~

Statutory Authority G.S. 90-270.9; 90-270.20(d).

.2706 HSP-PA REQUIREMENTS

(a) To be certified as a health services provider psychologist psychological associate (HSP-PA), a ~~A~~ North Carolina licensed psychological associate shall be qualified by education. ~~to be certified as a health services provider psychological associate (HSP-PA).~~ An applicant shall submit a completed, notarized application form and provide documentation of meeting health services provider requirements.

(b) An applicant shall demonstrate that he/she holds a master's, specialist, or doctoral degree which provides an academic foundation in the provision of health services as defined in Rule .2701(a) of this Section. ~~Qualified by education means a master's, specialist, or doctoral degree in clinical psychology, counseling psychology, school psychology, rehabilitation psychology, neuropsychology, health psychology, or applied developmental psychology.~~ Psychological Associates who receive their degrees during or after 1997 shall document that their degree program included an internship, externship, or practicum at a site providing health services which meets all the following criteria:

- (1) The internship, externship, or practicum shall have been in a planned and directed program of training in health services, in contrast to on-the-job training, and shall have provided the trainee with a planned and directed sequence of training integrated with the educational program in which the individual was enrolled.
- (2) The internship, externship, or practicum site shall have had a clearly designated and

appropriately licensed psychologist who was responsible for the integrity and quality of the training program.

- (3) Typically, the internship, externship, or practicum shall have been comprised of the equivalent of at least one semester's training and shall have been a minimum of 12 weeks and 200 hours of supervised training.
- (4) The internship, externship, or practicum shall have had a written program description detailing its functioning and shall have been approved by the applicant's training program prior to its occurrence.
- (5) The internship, externship, or practicum shall have provided a minimum of one hour per week of individual face-to-face, regularly scheduled supervision with the specific intent of overseeing the health services rendered by the trainee.
- (6) At least 50% of the training shall have been spent in the provision of direct health services to patients or clients seeking assessment of treatment, and shall have been comprised of a range of assessment and treatment interventions.
- (7) Supervision may have been provided in part by psychiatrists, social workers, or other mental health professionals qualified by the training site, but at least 50% of supervision shall have been provided by an appropriately licensed and/or certified psychologist.
- (8) Persons enrolled in the internship, externship or practicum shall have been designated as "interns", "externs", or "practicum students" or hold other designation which clearly indicated training status.

(c) An applicant who is approved for licensure as a Psychological Associate under senior psychologist requirements specified in 21 NCAC 54 .1707 and demonstrates that at least 25% of his/her qualifying practice has been in the provision of direct health services, as defined in Rule .2701(a) of this Section, shall be deemed to meet all requirements of this Rule for certification as a health services provider psychological associate (HSP-PA).

Statutory Authority G.S. 90-270.9; 90-270.13(c); 90-270.20(c).

CHAPTER 56 - BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Registration for Professional Engineers and Land Survey-

ors intends to adopt rules cited as 21 NCAC 56 .1608, .1713; amend 21 NCAC 56 .0802, .0804, .0902, .1103, .1301, .1602, .1604, .1707 and .1712.

Proposed Effective Date: December 1, 1995.

A Public Hearing will be conducted at 9:00 a.m. on October 13, 1995 at the Board Room, 3620 Six Forks Road, Suite 300, Raleigh, NC 27609-7197.

Reason for Proposed Action:

21 NCAC 56 .0802, .0804 and .0902 - To conform rules with recent statutory changes.

21 NCAC 56 .1103 - To clarify rule with regard to advances in computer drafting technologies.

21 NCAC 56 .1301 - To make procedural changes and technical corrections to Board disciplinary procedures.

21 NCAC 56 .1602 and .1604 - To make technical changes to the requirements for boundary surveys performed to North Carolina.

21 NCAC 56 .1608 - To adopt standard procedures for LIS/GIS surveys performed in North Carolina.

21 NCAC 56 .1707 - To make a technical change in the exemptions to the requirements for Continuing Education.

21 NCAC 56 .1712 - To clarify the means by which the Board will determine compliance with annual Continuing Education requirements.

21 NCAC 56 .1713 - To adopt procedures for Sponsors of Continuing Education activities.

Comment Procedures: Interested persons may present their comments either orally or in writing at the hearing to be held as indicated above. Written statements not presented at the hearing should be submitted to the Board office prior to October 2, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SECTION .0800 - FIRM REGISTRATION

.0802 PROCEDURE

(a) Professional Corporations and Limited Liability Companies:

- (1) (a) Request. A request for an application for registration as a professional corporation or professional limited liability company engaged in the practice of engineering or land surveying may be made at the Board address.
- (2) (b) Applicable Form. All professional corporations and professional limited liability companies complying with the statutory requirements of G.S. 89C, G.S. 55B and G.S. 57C which desire to practice engineering or land surveying shall apply by using a form prepared by the Board. This form requires the applicant, by and through its

~~president or manager~~ an officer, director and shareholder of the professional corporation or limited liability company who is currently licensed with the North Carolina State Board of Registration for Professional Engineers and Land Surveyors in the field(s) of professional services to be offered, to certify that it and the stockholders of the corporation or members of the limited liability company have complied with the provisions of the applicable provisions of the General Statutes and requires that the officers, directors, shareholders, members and professional employees be listed on that application.

(3) (c) Certificate of Registration:

- (A) (4) Upon receiving the application with registration fee of fifty dollars (\$50.00), the Board, after determining that the firm has complied with the statutory requirements, will then issue a certificate of compliance.
- (B) (2) The firm, then, must forward the certificate of compliance to the Secretary of State along with its articles of incorporation or articles of organization.
- (C) (3) Upon approval by the Secretary of State, the firm then must forward to the Board a certified copy of its articles of incorporation or articles of organization.
- (D) (4) Upon receipt of the certified copy of the articles of the firm, if all statutory requirements have been met, the Board will approve the application and issue the firm a certificate of registration.

(b) Business Firms:

- (1) Request. A request for an application for registration as a business firm engaged in the practice of engineering or land surveying may be made at the Board address.
- (2) Applicable Form. All business firms which desire to practice engineering or land surveying shall apply by using a form prepared by the Board. The form requires the applicant, through a principal officer, partner or owner, to certify that the business firm will be operated in compliance with the laws of the State of North Carolina and the regulations of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors.

(c) Certificate of Registration. Upon receiving the application with registration fee of fifty dollars (\$50.00), the Board, after determining that the firm has complied with the statutory requirements, will then issue a certificate of registration.

Statutory Authority G.S. 55B-10; 55B-11; 57C-2.01;

89C-10; 89C-24.

.0804 ANNUAL RENEWAL

(a) Renewal. The certificate of registration for a professional corporation, ~~and~~ limited liability company or business firm shall be renewed annually.

(b) Expiration. The certificate of registration shall expire on the last day of ~~December~~ June following its issuance by the Board and shall become invalid on that date unless renewed.

(c) Written Application. Upon written application ~~signed by its president or manager~~ on a renewal form prescribed by the Board accompanied by the prescribed fee of twenty five dollars (\$25.00), the Board shall renew the certificate of registration providing that the firm has complied with all rules of the Board and applicable General Statutes of North Carolina. The form will be mailed to all registrants in good standing ~~prior to the end of the calendar year~~ no later than June 1st.

(d) Failure of a firm to renew its certificate of registration within one ~~calendar~~ year of the expiration date shall require the firm to submit a new application for a new certificate of registration in accordance with all requirements of these rules and of all applicable statutes.

Statutory Authority G.S. 55B-10; 55B-11; 57C-2.01; 89C-10; 89C-24.

SECTION .0900 BUSINESS ORGANIZATIONS: GENERAL

.0902 TITLES OF BUSINESS ORGANIZATIONS

(a) Companies, partnerships, corporations, limited liability companies or any other business organization providing professional engineering or land surveying services in North Carolina shall not practice under a name that is misleading. Except as provided below, the title of engineering or land surveying companies, partnerships, ~~or~~ corporations, limited liability companies or any other business organization organized primarily to provide such professional services shall not contain the name of an individual not registered ~~in North Carolina~~ to provide the professional services offered or eligible for registration under the provisions of G.S. 89C-13.

(b) A firm may include in its title the name or names of one or more deceased or retired former members of the firm, provided that the firm submit a letter of request and explanation with its application to the Board, and that the Board finds as a fact that the use of the name is not misleading.

(c) A business organization shall not change its title, or operate under an assumed name, without first applying to the Board for a determination that the proposed title meets the requirements of Paragraph (a) of this Rule. Requests for name changes shall be made in writing on a form provided by the Board for this purpose.

Statutory Authority G.S. 55B-5; 57C-2.01; 89C-10; 89C-24.

SECTION .1100 - SEAL

.1103 STANDARD CERTIFICATION REQUIREMENTS

(a) Certification. The seal of a registrant on a map, drawing, plan, specification, plat, or report shall signify that it is the final work of the registrant unless the work is stamped or clearly marked as "preliminary work" as follows:

- (1) "Preliminary - Do not use for construction",
- (2) "Progress Drawings - Do not use for construction",
- (3) "Preliminary Plat - Not for recordation, conveyances, or sales",
- (4) "Final Drawing - Not released for construction".

(b) Certification of Final Drawings. Certification is not required for "preliminary work." All other drawings or maps shall conform to the following:

- (1) Certification is required on reproducibles or original drawings.
- (2) The seal may be a rubber stamp, embossed seal, computer-generated seal, or other facsimile found acceptable to the Board that becomes a permanent addition to a plan sheet or map.
- (3) The registrant's signature must be placed over, or near, the seal on the original document.
- (4) The date of signing must be annotated on the original document.
- (5) All sheets of engineering and surveying drawings must be sealed.
- (6) ~~The Registered Land Surveyor who performs a survey will be identified by name and registration number in all pertinent title descriptions or other technical documents. The name and address of the registrant's firm will be included on each sheet of engineering drawings. For surveys, the registrant's name and address will be included on the first sheet of the survey or title sheet.~~

(c) Certification of Specifications and Reports. Certification is not required for "preliminary work." All other specifications and reports shall conform to the following:

- (1) Certification is required on original specifications.
- (2) The seal may be a rubber stamp, or other facsimile.
- (3) The registrant's signature must be placed over, or near, the seal on the original document.

- (4) The date of signing must be annotated on the original document.
- (5) The title sheet of engineering specifications or other reports must be sealed and bear the name and address of the registrant's firm. The title sheet of any survey report or written description of property will include the name and address of the Registered Land Surveyor.

(d) Electronically transmitted drawings. Drawings that are transmitted electronically to a client or a governmental agency shall have the computer-generated seal removed from the original file. The electronic media shall have the following inserted in lieu of the signature and date:

This document originally issued and sealed by (name of sealer), (registration number), on (Date of sealing). This media should not be considered a certified document.

Statutory Authority G.S. 89C-10; 89C-16.

SECTION .1300 - BOARD DISCIPLINARY PROCEDURES

.1301 IMPROPER PRACTICE BY A REGISTRANT

(a) General. Alleged improper practice by a registrant shall be subject to Board investigation and disciplinary action by the Board if necessary.

(b) Preferring Charges. Any person who believes that any licensed Professional Engineer, ~~or~~ Registered Land Surveyor or ~~corporation~~ firm holding a certificate of authorization is in violation of the provisions of G.S. 89C or these rules may prefer charges against that person or ~~corporation~~ firm by setting forth in writing those charges and swearing to their authenticity. The charges are to be filed at the Board's office in Raleigh, North Carolina.

(c) Preliminary or Threshold Determination:

- (1) Upon receipt of a properly filed charge, an investigation is initiated.
- (2) A written notice and explanation of the charge is forwarded to the person or ~~corporation~~ firm against whom the charge is made and a response is requested of the person or ~~corporation~~ firm so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt requested.
- (3) In the discretion of the executive secretary, a field investigation may be performed.
- (4) After preliminary evidence has been obtained, the matter is referred to the Board's review committee which is made up of the

following individuals:

- (A) one member of the Board,
- (B) the legal counsel of the Board, and
- (C) the executive secretary of the Board, ~~and~~
- ~~(D) the violations administrator.~~
- ~~(5) The review committee is specifically delegated the responsibility of determining, prior to a formal hearing, whether or not a charge is unfounded or trivial.~~
- (5) (6) Upon review of the available evidence, the review committee makes a threshold determination of the charges brought. The review committee then presents to the Board written recommendations that:
 - (A) The investigation be continued;
 - (B) The charge be dismissed as unfounded or trivial;
 - (C) When the charge is admitted as true, the Board accept the admission of guilt by the person charged and order him not to commit in the future the specific act or acts admitted by him and, also, not to violate any of the acts of misconduct specified in the law at any time in the future;
 - (D) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
 - (E) ~~When the charge is apparently a minor violation, the~~ The Board give notice to the registrant of a decision without hearing as set out in Rule .1403 (b).

(d) Board Decision. Notice of the decision by the Board on recommendations of the review committee shall be given to the party against whom the charges have been brought and the party submitting the charge. Though it is not forbidden to do so, the Board is not required to notify the parties of the reasons of the Board in making its determination.

(e) Settlement Conference. When the Board issues a citation for hearing or notice of a decision without hearing, the registrant may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If after the completion of a settlement conference the registrant and Board's settlement committee do not agree to a resolution of the dispute for the full Board's consideration, the original administrative proceeding will commence. During the course of the settlement conference, no sworn testimony will be taken or will any witnesses be cross-examined. The Board's settlement committee will be made up of the following individuals:

- (1) The member of the Board who served on the

- review committee.
- (2) one public member from the Board,
- (3) the legal counsel of the Board, and
- (4) the executive secretary of the Board.

Statutory Authority G.S. 89C-10; 89C-21; 89C-22.

SECTION .1600 - STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA

.1602 SURVEYING PROCEDURES

(a) A Registered Land Surveyor shall spend the necessary time and effort to make adequate investigation to determine if there are encroachments, gaps, lappages, or other boundary evidence along each line he surveys. Points can be placed on the line from nearby closed or verified traverses and the necessary investigations made from these points. If these investigations are not made, then the surveyor cannot certify to an actual survey of that line and his plat must contain the appropriate qualifications in accordance with these standards.

(b) Any and all visible and/or recorded encroachments on the property being surveyed shall be accurately located and clearly indicated.

(c) Except as provided in Paragraph (d) of this Rule, metal ~~Metal~~ stakes or materials of comparable permanence shall be placed at all corners.

(d) Where a corner or important point falls in a right-of-way, in a tree, in a stream, or on a fence post, boulder, stone, etc., one or more monuments or metal stakes shall be placed in the boundary line so that the inaccessible point may be located accurately on the ground and the map.

(e) The results of a survey when reported to the user of that survey, whether in written or graphic form, shall be prepared in a clear and factual manner. All reference sources shall be identified. Artificial monuments called for in such reports shall be described as found or set. When no monument is found or set for points shown in such reports, that fact shall be noted.

(f) Where the results of a survey are reported in the form of a plat or a written description, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey, where such monument is within 2000 feet of the subject property, right-of-way, easement or other surveyed entity. Where the North Carolina grid system coordinates of said monument are on file in the North Carolina Department of Environment, Health, and Natural Resources, the coordinates of both the referenced corner or point and the monument(s) shall be shown in X (easting) and Y (northing) coordinates on the plat or in the written description or document. The coordinates shall be identified as based on 'NAD 83',

indicating North American Datum of 1983 or as 'NAD 27', indicating North American Datum of 1927. The tie lines to the monuments must be sufficient to establish true north or grid north bearings for the plat or description if the monuments exist in pairs. Control monuments within a previously recorded subdivision may be used in lieu of grid control. In the interest of bearing consistency with previously recorded plats, existing bearing control may be used where practical. In the absence of Grid Control, other natural or artificial monuments or land marks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.

(g) Area is to be computed by double meridian distance or equally accurate method and shown on the face of the plat, written description or other document. Area computations by estimation, by planimeter, by scale, or by copying from another source are not acceptable methods, except in the case of tracts containing inaccessible areas and in these areas the method of computation will be clearly stated.

Statutory Authority G.S. 89C-10; 89C-21.

.1604 MAPPING REQUIREMENTS FOR BOUNDARY SURVEYS

(a) The size of a map shall be such that all details can be shown clearly.

(b) Any lines which are not actually surveyed must be clearly indicated on the map and a statement included revealing the source of information from which the line is derived.

(c) Any revision on a map after a surveyor's seal is affixed shall be noted and dated.

(d) All surveys based on the North Carolina grid system shall contain a statement identifying the coordinate system used as the North American Datum of 1983 ("NAD 83") or the North American Datum of 1927 ("NAD 27").

(e) All plats (maps), unless clearly marked as "Preliminary Plat - Not for recordation, conveyances, or sales" shall be sealed, signed and dated by the Registered Land Surveyor and shall contain the following:

- (1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' or 'NAD 27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if known) such index was originally determined shall be clearly indicated.
- (2) The azimuth or courses and distances of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal

- places shall be appropriate to the class of survey required.
- (3) All plat lines shall be horizontal or grid measurements. All lines shown on the plat shall be correctly plotted to the scale shown. Enlargement of portions of a plat are acceptable in the interest of clarity, where shown as inserts. Where the North Carolina grid system is used the grid factor shall be shown on the face of the plat. If grid distances are used, it must be shown on the plat.
 - (4) Where a boundary is formed by a curved line, the following data must be given: actual survey data, or as a traverse of bearings and distances around the curve. If standard curve data is used the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on the face of the plat.
 - (5) Where a subdivision of land is set out on the plat, all streets and lots shall be accurately plotted with dimension lines indicating widths and all other information pertinent to retracing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.
 - (6) Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and information as required in the reference statute shall be plotted on the plat. All other corners which are marked by monument or natural object shall be so identified on all plats, and where practical all corners of adjacent owners along the boundary lines of the subject tract which are marked by monument or natural object shall be shown.
 - (7) The surveyor shall show one of the following where they could be determined:
 - (A) The names of adjacent land owners; or
 - (B) The lot, block, parcel and subdivision designations; or
 - (C) Other legal reference where applicable.
 - (8) All visible and apparent rights-of-way, water-courses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
 - (9) ~~Where the plat is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey, where such monument is within 2,000 feet of the subject~~

~~property. Where the North Carolina grid system coordinates of said monument are on file in the North Carolina Department of Environment, Health, and Natural Resources, the coordinates of both the referenced corner and the monuments shall be shown in X (easting) and Y (northing) coordinates on the plat. The coordinates shall be identified as based on 'NAD 83', indicating North American Datum of 1983, or as 'NAD 27', indicating North American Datum of 1927. The tie lines to the monuments shall also be sufficient to establish true north or grid north bearings for the plat if the monuments exist in pairs. Control monuments within a previously recorded subdivision, may be used in lieu of ties to grid control. In the interest of bearing consistency with previously recorded plats, existing bearing control should be used where practical. In the absence of Grid Control, or within a previously recorded subdivision, other appropriate natural monuments or land marks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used. Tie lines as required and defined in Rule .1602(f) of this Section shall be clearly and accurately shown on the face of the plat, whether or not the plat is to be recorded.~~

- (10) A vicinity map (location map) shall appear on the face of the plat.
- (11) Each map shall contain the property designation, name of owner or prospective owner, location (including township, county, and state), and the date or dates the survey was conducted. In addition each map will contain a scale of the drawing listed in words or figures, a bar-graph when required or necessary, the name, address, registration number, and seal of the surveyor, the title source and a legend depicting nomenclature.
- (12) ~~Area on all closed surveys is to be computed by double meridian distance or equally accurate method. Area computations by estimation, by planimeter, by scale, or by copying from another source are not acceptable methods, except in the case of tracts containing inaccessible areas and in these areas the method of computation will be clearly stated.~~

Statutory Authority G.S. 89C-10; 89C-21.

.1608 CLASSIFICATION/LAND INFORMATION SYSTEM/GEOGRAPHIC INFORMATION SYSTEM SURVEYS

- (a) General: Land Information System / Geographic

Information system (LIS/GIS) surveys are defined as the measurement of existing surface and subsurface features for the purpose of determining their accurate geospatial location. All LIS/GIS Boundary and Geodetic Control surveys performed in North Carolina shall be performed by a Registered Land Surveyor licensed in North Carolina. For the purpose of specifying minimum allowable surveying standards, three general classifications of LIS/GIS surveys are established:

- (1) Urban and Suburban LIS/GIS surveys (Class A). Urban and suburban LIS/GIS surveys include the location of features within lands which lie in or adjoining a town or city. For Class A LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 0.5 meter (1.64 feet).
- (2) Rural LIS/GIS surveys (Class B). Rural LIS/GIS surveys include the location of features within lands which lie outside of suburban areas. For Class B LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 2 meters (6.56 feet).
- (3) Regional LIS/GIS surveys (Class C). Regional LIS/GIS surveys include the location of features within lands which lie in multi-county areas. For Class C LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 5 meters (16.40 feet).

(b) The Registered Land Surveyor in responsible charge of the LIS/GIS boundary or geodetic control survey shall certify to all of the following in either written or digital form:

- (1) Class of LIS/GIS survey.
- (2) Method of measurement (i.e. global positioning system, theodolite and electronic distance meter, transit and tape).
- (3) Date(s) of the survey.
- (4) Datum used for the survey.

Statutory Authority G.S. 89C-10; 89C-21.

SECTION .1700 - CONTINUING PROFESSIONAL COMPETENCY

.1707 EXEMPTIONS

A registrant may be exempt from the professional development educational requirements for one of the following reasons:

- (1) New registrants by way of examination or reciprocity shall be exempt for their first renewal period.
- (2) A registrant serving on temporary active duty in the ~~armed forces~~ uniformed services of the United States for a period of time exceeding 120 consecutive days in a year shall be exempt

from obtaining the professional development hours required during that year.

- (3) Registrants experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.
- (4) Registrants who list their occupation as "Inactive" on the board approved renewal form and who further certify that they are no longer receiving any remuneration from providing professional engineering or land surveying services shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or land surveying, professional development hours must be earned in accordance with the requirements of Rule .1708 in this Section before returning to active practice for each year exempted not to exceed the annual requirement for two years.

Statutory Authority G.S. 89C-10(a); 89C-17.

.1712 COMPLIANCE

(a) Compliance with annual CPC requirements will be determined through an audit process conducted by the Board. Determination of individuals to be audited will be accomplished through a random selection process or as the result of information available to the Board. Individuals selected for auditing shall provide the Board with documentation of the CPC activities claimed for the renewal period, including but not limited to:

- (1) Attendance verification records in the form of transcripts, completion certificates, other documents supporting evidence of attendance, or a log as defined in Rule .1706 of this Section.
- (2) Information regarding course content, instructors and sponsoring organization, for activities presented by other than approved sponsors as defined in Rule .1713 of this Section.

(b) Attendance records must be maintained by individual registrants for a period of three years for audit verification purposes.

(c) Failure to comply with the annual CPC requirements of this Section shall result in non-renewal.

Statutory Authority G.S. 89C-10(a); 89C-17.

.1713 SPONSORS

(a) The Board approves sponsors of CPC activities and not particular courses. The Board will maintain a list of sponsors which have agreed to conduct programs in accordance with the standards of CPC activities set forth in 21 NCAC 56 .1700. Such sponsors shall

indicate their agreement with the requirements by executing a Sponsor Agreement on a form provided by the Board. These sponsors will be designated as "Approved Sponsors."

(b) By entering into an agreement with the Board to be designated as an "Approved Sponsor," the sponsor will agree to:

- (1) Allow persons designated by this Board to attend any or all courses, without fee or charge, for the purpose of determining that said course meets the standards of the Board.
- (2) Allow persons designated by this Board to review course material for the purpose of determining that said course meets the standards of the Board.
- (3) State in every brochure, publication or announcement concerning the course the general content of the course and the specific knowledge or skill to be taught or addressed, as well as the credit to be earned in Professional Development Hours (PDH).
- (4) Ensure that the instructors or presenters of the course or program are qualified to teach the subject matter.
- (5) Provide persons completing the course with written documentation attesting to that person's attendance to the course, as well as the name of the course, the date and location held, the instructor's name and the number

of PDHs earned.

- (6) Submit quarterly reports to the Board which shall include the sponsor's name, the name of the course, the date and location held, the instructor's name, the number of PDHs earned and a list of attendees.
- (7) Have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPC program and who has the responsibility for assuring and demonstrating to the Board compliance with these Rules, as well as for any other organization working with the sponsor for the development, distribution and/or presentation of CPC courses or activities.
- (8) Retain for a period of three years a copy of the above documentation.

(c) Sponsors must renew annually on a form provided by the Board.

(d) Failure of an approved sponsor to comply with the terms of the CPC sponsor agreement shall be grounds for the Board to revoke, suspend or terminate the agreement, to remove the sponsor's name from the list of approved sponsors and to notify the public of such action.

Statutory Authority G.S. 89C-10(a); 89C-17.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

DEPARTMENT OF COMMUNITY COLLEGES

Community Colleges

23 NCAC 2C .0604 - Program Review	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	07/13/95

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

15A NCAC 2B .0202 - Definitions	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
15A NCAC 2B .0211 - Fresh Surface Water Quality Stds. for Class C Waters	RRC Objection	07/13/95
Agency Revised Rule (Noticed in 9:23, 1979)	Obj. Removed	07/13/95
15A NCAC 2H .1003 - Coastal Stormwater Disposal	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
15A NCAC 2H .1008 - Design of Stormwater Management Measures	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95

Health: Epidemiology

15A NCAC 19A .0202 - Control Measures - HIV	RRC Objection	06/14/95
Agency Revised Rule	Obj. Removed	07/13/95

Wildlife Resources and Water Safety

15A NCAC 10F .0313 - Hyde County	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95

HUMAN RESOURCES

Facility Services

10 NCAC 3C .3001 - Definitions	RRC Objection	07/13/95
10 NCAC 3C .3108 - Suspension of Admissions	RRC Objection	07/13/95
10 NCAC 3C .3205 - Discharge of Minor or Incompetent	RRC Objection	07/13/95
10 NCAC 3C .3302 - Minimum Provisions of Patient's Bill of Rights	RRC Objection	07/13/95
10 NCAC 3C .3502 - Bylaws	RRC Objection	07/13/95
10 NCAC 3C .3602 - Responsibilities	RRC Objection	07/13/95
10 NCAC 3C .3603 - Personnel Policies and Practices	RRC Objection	07/13/95
10 NCAC 3C .3607 - Personnel Health Requirements	RRC Objection	07/13/95
10 NCAC 3C .3608 - Insurance	RRC Objection	07/13/95
10 NCAC 3C .3704 - Status	RRC Objection	07/13/95
10 NCAC 3C .3902 - Manager	RRC Objection	07/13/95
10 NCAC 3C .3904 - Patient Access	RRC Objection	07/13/95
10 NCAC 3C .4003 - Policies and Procedures	RRC Objection	07/13/95
10 NCAC 3C .4102 - Classification of Optional Emergency Services	RRC Objection	07/13/95
10 NCAC 3C .4104 - Medical Director	RRC Objection	07/13/95
10 NCAC 3C .4203 - Nursing Staff	RRC Objection	07/13/95
10 NCAC 3C .4303 - Nursing Services Maternal Services	RRC Objection	07/13/95
10 NCAC 3C .4307 - Nursing Staff of Neonatal Services	RRC Objection	07/13/95
10 NCAC 3C .4401 - Organization	RRC Objection	07/13/95

RRC OBJECTIONS

10 NCAC 3C .4502 - Pharmacist	RRC Objection	07/13/95
10 NCAC 3C .4512 - Medications Dispensed	RRC Objection	07/13/95
10 NCAC 3C .4702 - Organization	RRC Objection	07/13/95
10 NCAC 3C .4703 - Sanitation and Safety	RRC Objection	07/13/95
10 NCAC 3C .4704 - Distribution of Food	RRC Objection	07/13/95
10 NCAC 3C .4705 - Nutritional Support	RRC Objection	07/13/95
10 NCAC 3C .4801 - Organization	RRC Objection	07/13/95
10 NCAC 3C .4905 - Tissue Removal and Disposal	RRC Objection	07/13/95
10 NCAC 3C .5002 - Delivery of Care	RRC Objection	07/13/95
10 NCAC 3C .5201 - Psychiatric/Substance Abuse Svcs.: Applicability of Rules	RRC Objection	07/13/95
10 NCAC 3C .5202 - Definitions Applicable/Psychiatric/Substance Abuse Svcs.	RRC Objection	07/13/95
10 NCAC 3C .5205 - Seclusion	RRC Objection	07/13/95
10 NCAC 3C .5302 - Definitions	RRC Objection	07/13/95
10 NCAC 3C .5309 - Nursing/Health Care Administration and Supervision	RRC Objection	07/13/95
10 NCAC 3C .5315 - Dental Care	RRC Objection	07/13/95
10 NCAC 3C .5318 - Activities and Recreation	RRC Objection	07/13/95
10 NCAC 3C .5319 - Social Services	RRC Objection	07/13/95
10 NCAC 3C .5322 - Brain Injury Extended Care Physician Services	RRC Objection	07/13/95
10 NCAC 3C .5323 - Brain Injury Extended Care Program Requirements	RRC Objection	07/13/95
10 NCAC 3C .5324 - Special Nursing Req. Brain Injury Long Term Care	RRC Objection	07/13/95
10 NCAC 3C .5325 - Ventilator Dependence	RRC Objection	07/13/95
10 NCAC 3C .5326 - Physician Services for Ventilator Dependent Patients	RRC Objection	07/13/95
10 NCAC 3C .5403 - HIV Designated Unit Policies and Procedures	RRC Objection	07/13/95
10 NCAC 3C .5405 - Physician Services in a HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3C .5407 - Use of Investigational Drugs on the HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3C .5501 - Definitions	RRC Objection	07/13/95
10 NCAC 3C .5502 - Physician Reg. for Inpatient Rehab. Facilities or Units	RRC Objection	07/13/95
10 NCAC 3C .5507 - Comprehensive Rehabilitation Personnel Administration	RRC Objection	07/13/95
10 NCAC 3C .5508 - Comprehensive Inpatient Rehab. Program Staffing Req.	RRC Objection	07/13/95
10 NCAC 3C .5512 - Additional Req. for Traumatic Brain Injury Patients	RRC Objection	07/13/95
10 NCAC 3C .5513 - Additional Req. for Spinal Cord Injury Patients	RRC Objection	07/13/95
10 NCAC 3C .6102 - List of Referenced Codes and Standards	RRC Objection	07/13/95
10 NCAC 3C .6208 - Obstetrical Department Requirements	RRC Objection	07/13/95
10 NCAC 3H .2001 - Definitions	RRC Objection	07/13/95
10 NCAC 3H .2201 - Administrator	RRC Objection	07/13/95
10 NCAC 3H .2202 - Admissions	RRC Objection	07/13/95
10 NCAC 3H .2203 - Patients Not to be Admitted	RRC Objection	07/13/95
10 NCAC 3H .2206 - Medical Director	RRC Objection	07/13/95
10 NCAC 3H .2209 - Infection Control	RRC Objection	07/13/95
10 NCAC 3H .2212 - Quality Assurance Committee	RRC Objection	07/13/95
10 NCAC 3H .2301 - Patient Assessment and Care Planning	RRC Objection	07/13/95
10 NCAC 3H .2302 - Nursing Services	RRC Objection	07/13/95
10 NCAC 3H .2308 - Domiciliary Home Personnel Requirements	RRC Objection	07/13/95
10 NCAC 3H .2401 - Maintenance of Medical Records	RRC Objection	07/13/95
10 NCAC 3H .2501 - Availability of Physician's Services	RRC Objection	07/13/95
10 NCAC 3H .2505 - Brain Injury Long-Term Care Physician Services	RRC Objection	07/13/95
10 NCAC 3H .2506 - Physician Services for Ventilator Dependent Patients	RRC Objection	07/13/95
10 NCAC 3H .2601 - Availability of Pharmaceutical Services	RRC Objection	07/13/95
10 NCAC 3H .2604 - Drug Procurement	RRC Objection	07/13/95
10 NCAC 3H .2605 - Drug Storage and Disposition	RRC Objection	07/13/95
10 NCAC 3H .2606 - Pharmaceutical Records	RRC Objection	07/13/95
10 NCAC 3H .2607 - Emergency Drugs	RRC Objection	07/13/95
10 NCAC 3H .2701 - Provision of Nutrition and Dietetic Services	RRC Objection	07/13/95
10 NCAC 3H .2801 - Activity Services	RRC Objection	07/13/95
10 NCAC 3H .2802 - Social Services	RRC Objection	07/13/95
10 NCAC 3H .3002 - Quality of Specialized Rehabilitation Services	RRC Objection	07/13/95
10 NCAC 3H .3003 - Ventilator Dependence	RRC Objection	07/13/95

10 NCAC 3H .3004 - Brain Injury Long-Term Care	RRC Objection	07/13/95
10 NCAC 3H .3005 - Special Nursing Req. for Brain Injury Long-Term Care	RRC Objection	07/13/95
10 NCAC 3H .3011 - HIV Designated Unit Policies and Procedures	RRC Objection	07/13/95
10 NCAC 3H .3012 - Physician Services in an HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3H .3013 - Special Nursing Requirements for an HIV Designated Unit	RRC Objection	07/13/95
10 NCAC 3H .3015 - Use of Investigational Drugs for HIV Designated Units	RRC Objection	07/13/95
10 NCAC 3H .3016 - Additional Social Work Req. for HIV Designated Units	RRC Objection	07/13/95
10 NCAC 3H .3021 - Physician Req. for Inpatient Rehab. Facilities or Units	RRC Objection	07/13/95
10 NCAC 3H .3027 - Comprehensive Inpatient Rehab. Program Staffing Req.	RRC Objection	07/13/95
10 NCAC 3H .3031 - Additional Req. for Spinal Cord Injury Patients	RRC Objection	07/13/95
10 NCAC 3H .3103 - Site	RRC Objection	07/13/95
10 NCAC 3H .3201 - Required Spaces	RRC Objection	07/13/95
10 NCAC 3H .3401 - Heating and Air Conditioning	RRC Objection	07/13/95
10 NCAC 3H .3404 - Other	RRC Objection	07/13/95
10 NCAC 3O .0305 - Persons Subject to Licensure	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3O .0506 - Simplified Reporting for Certain Organizations	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3O .0607 - License Year	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3U .0705 - Special Training Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 3U .1403 - Aquatic Activities	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 3U .1717 - Health, Safety and Sanitation Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

RRC has Objected to the Following Repeals in 10 NCAC 3C and 10 NCAC 3H:

10 NCAC 3C .0101 - .0102, .0104 - .0110, .0201 - .0203, .0301 - .0307, .0401 - .0407, .0501 - .0505, .0601 - .0604, .0701 - .0708, .0801 - .0805, .0807, .0901 - .0917, .1001 - .1006, .1101 - .1102, .1201 - .1204, .1301 - .1303, .1401 - .1405, .1501 - .1508, .1510, .1601 - .1606, .1701 - .1717, .1801 - .1805, .1901 - .1912, .1915 - .1932, .2001 - .2008, .2020 - .2033, .2101 - .2105.

10 NCAC 3H .0108 - .0109, .0206 - .0220, .0306 - .0318, .0407 - .0409, .0505 - .0507, .0510 - .0517, .0605 - .0609, .0705 - .0712, .0810 - .0812, .0903 - .0911, .1003 - .1008, .1105 - .1109, .1130 - .1136, .1150 - .1163, .1204 - .1208, .1210, .1306 - .1308, .1405 - .1406, .1408 - .1410, .1501 - .1503, .1612 - .1613, .1703 - .1704, .1804 - .1807.

Medical Assistance

10 NCAC 26H .0302 - Reporting Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 26H .0304 - Rate Setting Methods for Non-state Facilities	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 26H .0305 - Allowable Costs	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 26H .0308 - Rate Appeals	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

INDEPENDENT AGENCIES

State Health Plan Purchasing Alliance Board

24 NCAC 5 .0414 - Alliance Participation Fee		
Rule Withdrawn by Agency		06/14/95
Agency Resubmitted Rule	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

JUSTICE

Criminal Justice Education and Training Standards

12 NCAC 9B .0202 - Responsibilities of the School Director	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
12 NCAC 9B .0206 - Basic Training -- Correctional Officers	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
12 NCAC 9D .0104 - Intermediate Law Enforcement Certificate	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
12 NCAC 9D .0105 - Advanced Law Enforcement Certificate	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

LICENSING BOARDS AND COMMISSIONS

Board of Certified Public Accountant Examiners

21 NCAC 8M .0102 - Registration Requirements	RRC Objection	07/13/95
Rule Withdrawn by Agency		08/10/95
21 NCAC 8M .0104 - Firms Deemed in Compliance	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
21 NCAC 8N .0307 - Firm Names	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

Board of Medical Examiners

21 NCAC 32H .0102 - Definitions	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 32H .0506 - Certification Requirement: Emergency Medical Dispatcher	RRC Objection	08/10/95
21 NCAC 32N .0002 - Continuances	RRC Objection	08/10/95

Board of Nursing Home Administrators

21 NCAC 37 .0302 - Initial Licensure Fee		
Rule Withdrawn by Agency		08/10/95
21 NCAC 37 .0404 - Continuing Education Programs of Study		
Rule Withdrawn by Agency		08/10/95
21 NCAC 37 .0502 - Application to Become Administrator-In-Training	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
21 NCAC 37 .0904 - Biennial Registration Requirements		
Rule Withdrawn by Agency		08/10/95
21 NCAC 37 .0914 - Duplicate Licenses		
Rule Withdrawn by Agency		07/13/95

Board of Pharmacy

21 NCAC 46 .1601 - Pharmacy Permits	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .1608 - Device and Medical Equipment Permits	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .2601 - Dispensing and Delivery	RRC Objection	08/10/95
Agency Revised Rule	Obj. Cont'd	08/10/95
21 NCAC 46 .2602 - Orders		
Rule Withdrawn by Agency		08/10/95
21 NCAC 46 .2603 - Education and Training	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .2604 - Records	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .2605 - Registration of Non-Pharmacists	RRC Objection	08/10/95

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>
21 NCAC 46 .2606 - Conveying Warnings	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>
21 NCAC 46 .2609 - Rehabilitation Equipment	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>
21 NCAC 46 .2803 - Req/pharmacies Dispensing Sterile Parenteral Pharmaceuticals	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>

SECRETARY OF STATE

Securities Division

18 NCAC 6 .1209 - Nonprofit Securities	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>08/10/95</i>
18 NCAC 6 .1314 - Escrow Agreements	RRC Objection	08/10/95
18 NCAC 6 .1401 - Application for Registration of Dealers	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>08/10/95</i>
18 NCAC 6 .1402 - Application for Registration of Salesmen	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>
18 NCAC 6 .1413 - Salesman Examination Required	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>
18 NCAC 6 .1702 - Application for Investment Adviser Registration	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>08/10/95</i>
18 NCAC 6 .1713 - Invest Adviser Merger/Consolidation/Acquisition/Succession	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>
18 NCAC 6 .1901 - Application for Registration of Athlete Agents	RRC Objection	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>

STATE PERSONNEL

Office of State Personnel

25 NCAC 1C .0405 - Temporary Appointment	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/13/95</i>
25 NCAC 1C .0407 - Temporary Part-Time Appointment	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/13/95</i>
25 NCAC 1D .2001 - Coverage	RRC Objection	07/13/95
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>07/13/95</i>
25 NCAC 1K .0312 - Eligibility	RRC Objection	07/13/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/13/95</i>

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>Division of Purchase and Contract</i>				
Senter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract	94 DOA 0803	Nesnow	03/06/95	
CMC Maintenance Co., a Div. of RDS Corp. v. Dept. of Administration, Div. of Purchase & Contract, et al.	95 DOA 0194	Phipps	06/13/95	
<i>State Construction Office</i>				
W. M. Piatt & Company v. State Construction Office, DOA	94 DOA 0738	Nesnow	04/11/95	10:03 NCR 221
Holland Group, Inc. v. Dept. of Administration, St. Construction Office	94 DOA 1565	Nesnow	06/01/95	10:07 NCR 619
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Ali Alsaras v. Alcoholic Beverage Control Commission	94 ABC 0526	Chess	05/16/95	
Norman D. Forbes v. Alcoholic Beverage Control Commission	94 ABC 0787	Gray	03/17/95	
Ben Sproul and Steve Pauls v. Alcoholic Beverage Control Comm.	94 ABC 1046	Chess	08/17/95	
Albert Stanley Tomanec v. Alcoholic Beverage Control Commission	94 ABC 1168	Becton	03/07/95	
Robert Johnson v. Alcoholic Beverage Control Commission	94 ABC 1661	West	05/01/95	
Stinking Mercury, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1682	Chess	05/03/95	
Alcoholic Beverage Control Comm. v. Depot Stop N Go, Inc.	94 ABC 1694	Mann	03/29/95	
John H. Robinson v. Alcoholic Beverage Control Commission	94 ABC 1727	Morrison	05/18/95	
Clara and Carson Young v. Alcoholic Beverage Control Commission	94 ABC 1729	Chess	05/11/95	
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Oliver Lee Wolfe Sr. v. Department of Human Resources	94 CSE 1397	Mann	03/31/95	
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Henry Roger Judd v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0431	Nesnow	08/02/95	
Mark Jason Smith v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0795	Gray	08/14/95	
Jeffrey Andre Jenkins v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 1408	Phipps	07/31/95	
<i>Private Protective Services Board</i>				
Lewis Austin Saintsing v. Private Protective Services Board	94 DOJ 1000	Chess	03/03/95	
Marcus T. Williams v. Private Protective Services Board	94 DOJ 1064	Chess	02/24/95	
Melvin Ray Cooper v. Private Protective Services Board	94 DOJ 1635	Reilly	03/09/95	
Donnell E. Morrow, Jr. v. Private Protective Services Board	94 DOJ 1823	Reilly	03/09/95	
Private Protective Services Board v. James C. Purvis	95 DOJ 0018	Chess	05/15/95	
Private Protective Services Board v. Samuel O. Smith	95 DOJ 0133	Chess	05/09/95	
Jann Mitchell Stanley v. Private Protective Services Board	95 DOJ 0420	Morrison	05/24/95	
Donald Wayne Clark v. Private Protective Services Board	95 DOJ 0444	Phipps	07/14/95	10:09 NCR 805
Richard Frank v. Private Protective Services Board	95 DOJ 0610	Phipps	08/10/95	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Marvin E. Shackelford v. Private Protective Services Board	95 DOJ 0611	Phipps	07/18/95	
Julius T. Fairley v. Private Protective Services Board	95 DOJ 0612	Phipps	07/20/95	
James L. McLeary, Jr. v. Private Protective Services Board	95 DOJ 0613	Phipps	07/18/95	
LABOR				
<i>Occupational Safety & Health Division</i>				
Lenoir County Public Schools v. Department of Labor, OSHA	95 DOL 0218	Nesnow	05/01/95	
<i>Private Personnel Service Division</i>				
Employment Consultants, Inc. v. Private Personnel Service Division	95 DOL 0209	Morrison	07/07/95	
<i>Wage and Hour Division</i>				
R.J. Scott, Pres. Pirate Enterprises, Inc. v. Labor, Wage & Hour Div.	94 DOL 1524	West	03/23/95	
PUBLIC INSTRUCTION				
Glenn II, on behalf of Glenn II, and Glenn II, Individually v. Charlotte-Mecklenburg County Schools	93 EDC 0549	Chess	03/16/95	
S.M. on Behalf of J.A.M., and S.M., Individually, and J.M. v. Davie County Board of Education	93 EDC 0742	Phipps	05/30/95	
William Hewett v. State Board of Education	94 EDC 0533	Gray	03/31/95	10:02 NCR 179
James Midgette v. State Board of Education	94 EDC 1401	Reilly	05/02/95	
Deborah R. Crouse v. State Board of Education	95 EDC 0003	Chess	04/10/95	
Bobby G. Little v. Department of Public Instruction	95 EDC 0168	Phipps	03/20/95	
Tonya Marie Snipes and Robert Leon Snipes v. Orange County Schools	95 EDC 0225	Mann	05/15/95	
Vance County Schools v. Haywood Yarbrough	95 EDC 0235	Mann	08/04/95	
Laverne K. Suggs v. Department of Public Instruction	95 EDC 0384	Nesnow	07/12/95	
Lavern K. Suggs v. Guilford County Schools	95 EDC 0385	Nesnow	06/02/95	
Kenneth G.H. Leftwich v. State Board of Education	95 EDC 0405	Nesnow	05/25/95	
STATE BAR				
Phillip S. Banks, III v. North Carolina State Bar	95 BAR 0861	Morrison	08/18/95	
STATE PERSONNEL				
<i>Caswell County Health Department</i>				
Della Brown v. Caswell County Health Department	94 OSP 0834	Nesnow	06/12/95	
Julie R. Johnson v. Caswell County Health Department	94 OSP 0865	Reilly	03/15/95	
<i>N.C. Central University</i>				
Peter A. Fore v. N.C. Central University	93 OSP 0189	Nesnow	06/13/95	
<i>Department of Commerce</i>				
T. Sherwood Jernigan v. Dept. of Commerce, Savings Institution Div.	94 OSP 0775	West	05/25/95	
<i>Department of Correction</i>				
Nancy Gilchrist v. Department of Correction	94 OSP 0121	West	03/09/95	
Howard Gray Sadler v. Correction, Div. of Adult Probation/Parole	94 OSP 0332	West	05/15/95	
Thomas Wayne Smathers v. Department of Correction	94 OSP 0590	West	03/23/95	
George J. McClearse, Jr. v. Department of Correction	94 OSP 0644	Gray	04/19/95	
Nancy C. Walker v. Department of Correction	94 OSP 1206	Gray	08/18/95	
Ruth Kearney v. Department of Correction	94 OSP 1807	Becton	03/13/95	
James W. Hughes v. Department of Correction, Blue Ridge Unit Avery	95 OSP 0334	Becton	07/25/95	
William E. Norwood, Jr. v. Department of Correction	95 OSP 0500	Gray	08/16/95	
<i>Department of Crime Control and Public Safety</i>				
Betty Sue Whitley v. National Guard Dept. Crime Control & Public Safety	94 OSP 1399	Chess	06/13/95	
Robert W. Beasley v. Crime Control & Public Safety, St. Highway Patrol	94 OSP 1821	Morrison	08/10/95	10:11 NCR 965

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Office of the District Attorney</i>				
Shannon Caudill v. Office of the District Attorney for Judicial District 17-B, and Administrative Office of the Courts	95 OSP 0188	Nesnow	03/20/95	
<i>Dorothea Dix Hospital</i>				
Paul E. Hunter v. Dorothea Dix Hospital	95 OSP 0504	Gray	07/12/95	
<i>East Carolina University</i>				
Lillie Mercer Atkinson v. ECU, Dept. of Comparative Medicine, et al.	95 OSP 0038*7	Becton	06/08/95	
Lillie Mercer Atkinson v. ECU, Dept. of Comparative Medicine, et al.	95 OSP 0057*7	Becton	06/08/95	
<i>Edgecombe County Health Department</i>				
Ronald E. Wooten v. Edgecombe County Health Department	94 OSP 1209	Gray	07/10/95	
<i>Department of Environment, Health, and Natural Resources</i>				
Babette K. McKemie v. EHNR, Div. of Environmental Management	94 OSP 0358	Chess	05/31/95	
<i>Fayetteville State University</i>				
George Benstead v. Fayetteville State University	94 OSP 1597	Nesnow	04/04/95	
Lt. Bobby McEachern v. FSU Police Department	95 OSP 0042*9	Reilly	07/05/95	
Officer Gregor A. Miles v. FSU Police Department	95 OSP 0058*9	Reilly	07/05/95	
<i>Forsyth Stokes Mental Health Center</i>				
Michael Howell v. Forsyth Stokes Mental Health Center	94 OSP 0499	Chess	03/24/95	
<i>Department of Human Resources</i>				
April Benfield v. Department of Human Resources and Western Carolina Center	94 OSP 1758	Nesnow	06/07/95	
Eugene Hightower, Jr. v. Department of Human Resources, EEO	94 OSP 1811	West	05/04/95	
Rebecca Johnson v. Human Resources, Special Care Center	95 OSP 0138	West	03/31/95	
<i>Black Mountain Center</i>				
James Harrison v. Black Mountain Center, Dept. of Human Resources	94 OSP 0994*11	Gray	07/31/95	
James Harrison v. Black Mountain Center, Dept. of Human Resources	95 OSP 0190*11	Gray	07/31/95	
<i>Cherry Hospital</i>				
William H. Cooke v. DHR, Cherry Hospital	93 OSP 1547	Gray	03/16/95	
<i>Durham County Department of Social Services</i>				
Delores H. Jeffers v. Durham County Department of Social Services	94 OSP 0939	Morrison	06/12/95	
<i>Gaston County Department of Social Services</i>				
Bobbie J. Gilliam v. Gaston County Department of Social Services	94 OSP 0770	West	05/24/95	
<i>Iredell County Department of Social Services</i>				
Vernon E. Grosse v. Iredell County Department of Social Services	94 OSP 0282	Becton	03/09/95	
Bonnie N. Bellamy v. Iredell County Department of Social Services	94 OSP 0739	Chess	03/01/95	10:01 NCR 48
<i>Richmond County Department of Social Services</i>				
Emma Jane Bradley v. Richmond County Dept. of Social Services	95 OSP 0055	Reilly	07/18/95	10:09 NCR 809

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Wake County Department of Health</i>				
Regina K. Crowder v. Wake County/Health Dept., Caroline E. Lee, Dir.	94 OSP 1032**	Nesnow	06/12/95	
Sabrina R. Crowder v. Wake County/Health Dept., Richard Stevens	94 OSP 1072**	Nesnow	06/12/95	
Thomasine D. Avery v. Wake County/Health Department	94 OSP 1074**	Nesnow	06/12/95	
<i>Wake County Department of Social Services</i>				
Olivia L. Jordan v. Wake County/Department of Social Services	94 OSP 1179**	Nesnow	06/12/95	
<i>Department of Labor</i>				
Michael Robert Smith v. Department of Labor	94 OSP 0610	Nesnow	06/09/95	
<i>Lee-Harnett Area Mental Health, Developmental Disabilities, and Substance Abuse Authority</i>				
Julie Dyer v. Lee-Harnett Area MH/DD/SA Authority	94 OSP 0750	Gray	03/20/95	
<i>North Carolina Special Care Center</i>				
Lynn Banasiak Bass v. North Carolina Special Care Center	95 OSP 0419	Phipps	08/01/95	
<i>North Carolina State University</i>				
Artelia S. Clark v. N.C. State University	89 OSP 0612	Nesnow	07/07/95	
Wesley Brown v. N.C. State University	94 OSP 1173	Reilly	06/30/95*	10:08 NCR 700
David L. Bauer v. North Carolina State University	95 OSP 0044	Morrison	04/25/95	
Billy Ray Kelly v. NCSU Physical Plant	95 OSP 0130	West	03/22/95	
Heather Ann Waskiewicz v. NCSU, Dept. of Public Safety	95 OSP 0213	Phipps	07/06/95	
<i>Orange-Person-Chatham Mental Health</i>				
Patricia A. Harris v. Orange-Person-Chatham Mental Health	95 OSP 0162	West	04/11/95	
<i>Department of Transportation</i>				
Michael E. Kornegay v. Department of Transportation	93 OSP 1700	Gray	03/24/95	
Robert F. Goins v. Department of Transportation	94 OSP 0281	Chess	05/30/95	
Esther Doe Murphy v. Department of Transportation	95 OSP 0114	Gray	07/10/95	
Judy H. Arnold v. Department of Transportation, Div. of Motor Vehicles	95 OSP 1075	Becton	07/31/95	
<i>University of North Carolina</i>				
Beth Ann Miller v. UNC Student Health	94 OSP 0800	Nesnow	05/25/95	
<i>UNC Hospitals</i>				
David Patrick Malone v. Univ. of NC Hospital at Chapel Hill	94 OSP 0771	Becton	03/14/95	
Lillian C. Daniels v. UNC Hospital	95 OSP 0056	Morrison	05/11/95	
<i>Wake County</i>				
Mark Morgan v. Wake County	94 OSP 0937	Nesnow	04/28/95	10:04 NCR 287
STATE TREASURER				
John W. Parris v. Bd. of Trustees//NC Local Gov. Emp. Retirement Sys.	91 DST 1093	Nesnow	05/04/95	
Channie S. Chapman v. Bd./Trustees//NC Local Gov. Emp. Ret Sys.	94 DST 0443	Morrison	05/15/95	
Bryan L. Basden v. Retirement Systems Division	95 OSP 0171	Chess	06/21/95	
Wayne La Broad v. Bd./Trustees//Teachers/St. Emp. Retirement Sys.	95 DST 0219	Morrison	07/14/95	
Tammy Evonne Ashcroft Brown v. Bd./Tr./NC Local Gov. Emp. Ret Sys.	95 DST 0404	Phipps	07/27/95	10:10 NCR 872

Sema White

EXHIBITS

For Petitioner: None

For Respondent: Respondent's Exhibit 1, 2, 3 and 4

ISSUE

Was Petitioner's application for ABC malt beverage permits properly denied?

STIPULATIONS PLACED ON RECORD

1. Venue and jurisdiction are correct.
2. There are no pending motions except the Petitioner's Motion In Limine to be heard prior to the beginning of the contested case hearing.
3. There has been an exchange of exhibits between the parties.
4. There has been free and open discovery between the parties.
5. There has been an exchange of witness lists which was amended prior to the beginning of the contested case hearing.
6. The trial of these contested cases is in all respects ready for hearing.
7. There has been a discussion of settlement alternatives between the parties and the parties have been unable to settle these contested cases.
8. The only issue for determination in the contested case hearing is the validity of the rejection of an on-premises beer permit as indicated in the official Notice of Rejection from Respondent dated December 6, 1994, and as amended in the second contested case filed by the Respondent.

**MOTIONS PRIOR TO THE
BEGINNING OF THE CONTESTED CASE HEARING**

The Petitioner argued his Motion *In Limine*. This Motion was denied.

Based upon the stipulations and the greater weight of the admissible evidence, the undersigned makes the following

FINDINGS OF FACT

1. The Office of Administrative Hearings has personal and subject matter jurisdiction of this consolidated contested case pursuant to Chapters 18B and 150B of the North Carolina General Statutes.
2. Petitioner Vladimir Walter Kozlik, Jr., trading as the Happy Corner, has applied for on-premises malt beverage permits from the Respondent, the North Carolina Alcoholic Beverage Control Commission.
3. Respondent is an agency of the State of North Carolina and is charged with the regulation of the sale of alcoholic beverages within the State.
4. Petitioner seeks on-premises malt beverage permits for the operation of the Happy Corner Tavern located at 2003 Emmanuel Church Road, Conover, Catawba County, North Carolina.
5. On or about the second day of June, 1992, the Petitioner pursuant to a no contest plea was found guilty in the

District Court of Catawba County of a violation of G.S. 14-204(1) for operating an establishment for the purposes of prostitution and assignation. Petitioner was ordered to pay a fine of \$200 and costs; given a three month suspended sentence; and placed on unsupervised probation for a period of five years (Respondent's Exhibit No. 3).

6. On or about October 21, 1994, Respondent issued to Petitioner temporary malt beverage and wine permits to operate this tavern and Petitioner began operating under these permits.
7. On or about November 4, 1994, ALE Agent Tally entered into the establishment and discussed with the Petitioner the regulations governing the operation of the premises (Respondent's Exhibit No. 2).
8. On that date, Agent Tally specifically discussed with the Petitioner the regulations pertaining to the prohibition of living quarters on the permitted premises.
9. On or about December 6, 1994, the Respondent revoked the temporary permits of the Petitioner and denied his application for ABC permits. The Petitioner was allowed to continue operating under temporary permits pending the hearing of these contested cases.
10. On or about February 17, 1995, Agent Tally entered the premises for purposes of conducting an outlet check. Agent Tally encountered one of Petitioner's employees, Julie Burcham, and Agent Tally observed a bed in the storage area directly behind the counter. (Respondent's Exhibit No. 4).
11. The size of the storage area was approximately five and a half feet wide by approximately 13 feet in length.
12. The bed was a full-size bed. It had sheets and blankets on the bed. The bed was not made up and there were clothes on the bed and in the room.
13. Petitioner admitted that he spent nights in his establishment to prevent acts of vandalism and protect his premises. Petitioner feared that his establishment was going to be damaged.
14. On or about February 18, 1995, ABC agents conducted an undercover investigation of Petitioner's premises. No charges were filed against Petitioner's establishment as a result of this investigation.
15. Agent Tally concluded that there was adequate parking for Petitioner's establishment, and Petitioner's establishment would create no undue burden on traffic conditions in the neighborhood and further that the establishment complied with all city and county zoning ordinances.
16. Agent Spurling of Catawba County was provided with an opportunity to present local government objections. No objection was filed by the County of Catawba.
17. Agent Tally had not investigated any criminal activity on the premises or history of criminal activity on the permitted premises.
18. Julie Burcham has been previously prosecuted for the crime of prostitution in connection with Petitioner's conviction. She is Petitioner's employee and girlfriend.
19. During the period of time that Edmond W. Caldwell, Sr., operated the Happy Corner with on-premises ABC permits from 1976 to 1993, the establishment had been vandalized approximately five to seven times.
20. The Petitioner is operating the premises as the tenant of Mr. Caldwell and has been a good tenant. He has not in any way damaged the premises.
21. During the month of June 1995, Ms. Nina Greeson observed an individual standing in front of the premises urinating. Greeson did not report this incident to the police.
22. Several residents of the neighborhood complained that cars were being driven dangerously on ingress and egress from the premises.
23. Incidents of men walking on the roads adjacent to the location of the premises has increased in the several weeks

prior to the hearing.

24. Little of the testimony concerning the allegations regarding neighborhood objections could be connected to any improper activity regarding the operation of the premises.
25. In the latter part of May 1995, Sema White observed a young woman in the parking lot provocatively dressed, leaning over into a car talking to two men.
26. L. B. (Rick) Beasley has been designated by the City of Conover to make recommendations to Respondent concerning the suitability of persons or locations for ABC permits. The City of Conover did not approve of the applicant or the location. The City of Conover did certify that the location was in compliance with local zoning ordinances; complied with all building and fire codes, but the City believed that this establishment would be detrimental to the residential neighborhood because of the Petitioner's past criminal record and by the fact that the premises parking lot is used as a bus stop for elementary and high school buses. (Respondent's Exhibit No. 1).
27. No objection was raised at the hearing concerning the issuance to Petitioner of off-premises malt beverage and wine permits.

Based upon the foregoing Stipulations and Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction of these contested cases pursuant to Chapters 18B and 150B of the North Carolina General Statutes.
2. A conviction under G.S. 14-204(1) is a misdemeanor conviction. Petitioner's conviction of this offense pursuant to a plea of no contest on June 2, 1992 does not constitute an offense that would make the Petitioner ineligible for ABC permits pursuant to G.S. 18B-900. There was no other evidence of Petitioner's prior criminal record, if any; therefore, Petitioner is not ineligible to hold ABC permits because of this conviction.
3. Although there was slight evidence in the record as to the reputation of the Petitioner, this evidence was based primarily upon Petitioner's conviction of a misdemeanor; therefore, Petitioner is not ineligible for permits under G.S. 18B-901(c)(1). The evidence was insufficient to establish that Petitioner is unsuitable to hold ABC permits. Therefore, it is concluded that Petitioner is a suitable person to hold ABC permits pursuant to G.S. 18B-901(c).
4. The location has been previously operated under the same name and type of establishment for 17 years. Therefore, the location cannot be found to be unsuitable pursuant to G.S. 18B-901(c).
5. The local government objection was based upon three factors contained in Respondent's Exhibit No. 2. Evidence of a single conviction of a misdemeanor on the part of the Petitioner is insufficient to constitute Petitioner as a criminal offender sufficient to make him ineligible for permits. The finding that the premises is located in a residential area where it has always been located is insufficient to deny Petitioner's permits. Lastly, it is insufficient to declare Petitioner ineligible because the premises' parking facility is used as a bus stop for elementary and high school buses. The evidence was insufficient to establish any adverse connection between the bus stop and these premises.
6. The existence of a full-size bed on the premises and the existence of some clothing on and around the bed does not convert the storage area into a living quarters for purposes of 4 NCAC 2S .0102(e). Living quarters is not defined in this rule.
7. G.S. 18B-901(c)(8) is quoted as follows:

Any other evidence that would tend to show whether the applicant would comply with the ABC laws and whether the operation of his business at the location would be detrimental to the neighborhood.

The question as to whether or not the operation of this business by the permittee at this location is detrimental to

the neighborhood is a legitimate issue raised by these facts. Any establishment with on-premises ABC permits which is operated by a permittee who has previously been convicted of a prostitution-related offense, coupled with the permittee's employee/girlfriend also having been prosecuted for a prostitution-related offense taken together with the existence of a full-size bed on the premises and the identification of a woman observed in the parking lot provocatively dressed would cumulatively raise sufficient factors to conclude that the operation of this establishment would be detrimental to a residential neighborhood.

8. No evidence was introduced to establish that any prostitution or related offense occurred on the premises. However, the evidence was sufficient to indicate the premises as presently operated at this location "tends to show" it would be detrimental to the neighborhood under G.S. 18B-901(c)(8).
9. The removal of the full-size bed from the premises; the removal of a female employee who has been previously prosecuted for prostitution along with the Petitioner's monitoring of the parking lot and premises to remove any female patron provocatively dressed who engaged in an activity which could be interpreted as solicitous behavior would cure the detrimental conditions to the neighborhood. Therefore, under G.S. 18B-906(c), if Petitioner between the time of the issuing of the recommended decision and the final decision eliminates these adverse factors, the Petitioner's requested on-premises ABC malt beverage permits should be issued.
10. Respondent did not err in denying Petitioner's application for on-premises malt beverage permits. Petitioner is entitled to off-premises permits for the sale of alcoholic beverages because these permits have never been at issue.

Based on the foregoing Stipulations, Findings of Fact and Conclusions of Law, the undersigned makes the following

RECOMMENDED DECISION

That the ABC Commission deny Petitioner's application for on-premises malt beverage permits unless Petitioner pursuant to G.S. 18B-906(c) can establish that his premises as operated would be compatible with the character of this residential neighborhood as it has been operated for 17 years free of any indicia of solicitous conduct as stated in the above Conclusions of Law. Further, that the Respondent issue to the Petitioner off-premises permits for malt beverages.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Alcoholic Beverage Control Commission.

This the 2nd day of August, 1995.

Julian Mann, III
Chief Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 OSP 1821**

ROBERT W. BEASLEY
Petitioner,

v.

N.C. DEPT. OF C.C. & P.S.
STATE HIGHWAY PATROL
Respondent.

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RECOMMENDED DECISION

The appeal of Robert W. Beasley, a former employee of the North Carolina Department of Crime Control and Public Safety, Division of Highway Patrol, was heard by Fred G. Morrison Jr., Senior Administrative Law Judge, on June 28 & 29, 1995, in Raleigh, North Carolina.

APPEARANCES

For Petitioner: Philip G. Kirk
Kirk, Kirk, Gwynn & Howell
P.O. Box 729
Wendell, NC 27591

For Respondent: Christine Odell DiNovo
N.C. Dept. of Justice
Crime Control Section
P.O. Box 27687
Raleigh, NC 27611

ISSUE

Whether the Respondent had just cause to terminate Petitioner's employment as a Highway Patrol Trooper.

OPINION OF THE ADMINISTRATIVE LAW JUDGE

Based on competent evidence admitted at the hearing, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Mr. Robert W. Beasley, Petitioner, was continuously employed with the State Highway Patrol from the fall of 1979, until September 21, 1994, when he was discharged. He was a career State employee when dismissed.
2. Respondent dismissed Petitioner from his employment as a Trooper with the State Highway Patrol for alleged "Type I Personal Conduct violations" of the State Highway Patrol Code of Conduct. Said dismissal was ordered by Colonel R.A. Barefoot, the Patrol Commander, and carried out by Major R.W. Holden, the Director of Internal Affairs.
3. Petitioner's dismissal was based on the results of an Internal Affairs investigation. This investigation began in July, 1994, after Gerald Perry, the owner/operator of Morrisville Gulf, alleged that Petitioner went to Mr. Perry's place of business in March, 1994, and borrowed \$400.00. In exchange for the loan, Petitioner gave Mr. Perry a check, which was subsequently returned by the bank due to insufficient funds. Soon after the investigation began, a second complaint was received from Ray Scarborough who alleged that in June, 1994, Petitioner had given him a worthless check in the amount of \$150.00.
4. During the course of the investigation, the investigators discovered that: (1) Petitioner had obtained money and

property in exchange for worthless checks he issued to numerous persons, most of whom were owners of wrecker businesses who regularly were called to accident scenes by the State Highway Patrol; (2) that he knew at the time that he issued the checks that he had insufficient funds or credit in his account to cover the checks; and (3) that as of the time of the investigation, he had not repaid the loans. The investigation also revealed that on two separate occasions, Petitioner obtained money and/or services from owners of wrecker businesses, promising to repay the debt the following day, but in fact did not pay as promised. Most of these transactions occurred while Petitioner was on duty, in uniform, and while operating his issued State Highway Patrol vehicle.

5. The Internal Affairs Investigators, after interviewing Petitioner and each of the identified victims, prepared a Report of Investigation and Memorandum to the Director of Internal Affairs wherein they concluded that Petitioner had violated the following provisions of the State Highway Patrol Code of Conduct:

- a. Subchapter 9C.0002 Conformance to Laws; (Worthless Checks and False Pretenses);
- b. Subchapter 9C.0004 Unbecoming Conduct; and
- c. Subchapter 9C.0042 Payment of Debts

6. After Major Holden, the Director of Internal Affairs, had reviewed the Report of Investigation, accompanying Memorandum, and Petitioner's personnel file, he discussed the matter with the investigators. He agreed with their findings and recommended to the Patrol Commander that Petitioner be dismissed from the State Highway Patrol.

7. The Patrol Commander reviewed the Memorandum and Report of Investigation. Subsequently, he directed that Petitioner be dismissed and a Pre-Dismissal Conference be conducted.

8. A Pre-Dismissal Conference was held and Petitioner was subsequently dismissed from the State Highway Patrol on September 21, 1994.

9. Pursuant to State Highway Patrol Policy, Petitioner appealed his dismissal to the Secretary of Crime Control and Public Safety. A Patrol Advisory Board consisting of five members of the State Highway Patrol was convened and unanimously recommended to the Secretary of Crime Control and Public Safety that Petitioner's dismissal be upheld.

10. The Secretary of Crime Control and Public Safety upheld Petitioner's dismissal, and Petitioner filed a Petition for Contested Case Hearing with the Office of Administrative Hearings on December 30, 1994.

11. The evidence presented at the hearing of this contested case revealed the following relevant facts:

(a) In December, 1991, while on duty and in uniform, Petitioner borrowed \$50.00 from Wade Cummings (owner of Cummings Body Shop). Cummings stated Petitioner said he had forgotten his checkbook and needed to purchase yearly calendars for the "troopers'" office. He promised to repay the debt the following day. Petitioner, by his own admission, did not need to purchase yearly calendars for the Troopers' office and he did not repay the debt the following day as promised. Significantly, the only prior contact Petitioner ever had with Mr. Cummings was while on official duties, investigating accidents at which Mr. Cummings was the wrecker driver. Petitioner testified that he borrowed this money to get his children's school pictures, not for patrol calendars.

(b) In October, 1993, Petitioner had \$600.00 worth of repairs done to his personal vehicle from Bobby Harrington (owner of Tilley Brothers Body Shop), promising to pay for the repair work the next day. Petitioner has not paid Mr. Harrington as promised. Mr. Harrington had no prior personal relationship with Petitioner and released the vehicle to Petitioner, thereby extinguishing his mechanic's lien, only because Petitioner was a State Trooper.

(c) On September 30, 1992, Petitioner issued to David Campbell a worthless check in the amount of \$2,500.00.

(d) On January 25, 1993, Petitioner issued to Gary Ivey (owner of Ivey's Towing & Transport Service) a worthless check in the amount of \$250.00. This amount had not been repaid as of September 21, 1994.

(e) On January 14, 1994, Petitioner issued to Leon Hyatt (owner of Garner Wrecker Service) a worthless check

in the amount of \$80.00.

- (f) On February 28, 1994, Petitioner issued to David Campbell a worthless check in the amount of \$2,200.00.
- (g) On March 11, 1994, Petitioner issued to Gerald Perry a worthless check in the amount of \$400.00.
- (h) On June 17, 1994, Petitioner issued to Roy Scarborough a worthless check in the amount of \$150.00.
- (i) As of September 21, 1994, Petitioner owed \$300.00 to Donnie Harrison, operator of Swift Creek Mini Mart. This bill was approximately three years old.
- (j) In January of 1993, Petitioner borrowed \$400.00 from wrecker driver Ronald White and issued him a check for this amount. White never deposited the check. He was repaid.
- (k) In August of 1993, Petitioner borrowed \$300.00 from Billy Sauls (owner of Sauls Exxon) and failed to repay him until March, 1995. Sauls loaned him the money because he was a State Trooper.
- (l) Petitioner borrowed \$150.00 from Howard Casey (owner of G&H Wrecker Service) in or around August, 1993, and failed to timely repay him.
- (m) As of September 21, 1994, Petitioner owed \$80.00 to Leon Hyatt (owner of Garner Wrecker Service). Mr. Hyatt held a check in that amount since January 14, 1994. He has been repaid.
- (n) In December, 1991, Petitioner went to the home of Wade Cummings (owner of Cummings Body Shop), at night, and asked to borrow \$4,000.00. The only prior contact Petitioner had with Mr. Cummings was at accident scenes and when he borrowed \$50.00 earlier that day. Petitioner told Mr. Cummings, a virtual stranger, that he had financial problems because the Highway Patrol would not allow him to continue operating his lawn maintenance business (in fact, Petitioner testified that he terminated his lawn maintenance business in 1989). Mr. Cummings loaned Petitioner \$2,000.00 based on the promise it would be repaid in three months. Final payment was not made until August, 1993.
- (o) In or about August, 1993, while on duty, in his uniform, and investigating a wreck, Petitioner went to the business establishment of Jimmy Marcum (owner of Collins Wrecker Service) and asked if he could borrow \$100.00 until the next day. Petitioner had never met Mr. Marcum before asking to borrow the money. Approximately one month later, Petitioner returned and borrowed an additional \$400.00. The debts were not timely paid as promised.

12. There is a special relationship between the State Highway Patrol and wrecker drivers, due to the critical role of the Highway Patrol and individual Troopers in maintaining a fair and impartial wrecker rotation list free from even the appearance of favoritism or other impropriety. Troopers call wreckers to accident scenes when motorists request such service. Petitioner was aware of this special relationship. Respondent does not pay wrecker drivers any consideration for responding to accidents. They are only put on a rotation system to respond to the accident and are paid directly by the owners of the automobiles.

13. Petitioner was aware that as a State Trooper, he had an obligation to conduct himself, at all times, and particularly while on duty and in uniform, in such a manner as to reflect favorably upon himself and his employer, the State Highway Patrol.

14. Petitioner used his position as a State Trooper to obtain financial benefit for himself and, in doing so, discredited himself and the image of the State Highway Patrol among some wrecker drivers and their wives.

15. Prior to the investigation of the allegations leading to his dismissal, Petitioner had received lesser forms of discipline as follows:

<u>Date</u>	<u>Type Discipline</u>	<u>Reason</u>
August 1993	Final Written Warning	Unsatisfactory Job Performance

November 1992	Written Warning	Unsatisfactory Job Performance
September 1992	Oral Warning	Unsatisfactory Job Performance
August 1991	3rd Level Reprimand	Payment of Debts
July 1991	2nd Level Reprimand	Payment of Taxes

16. No credible evidence was presented to establish that Petitioner's dismissal was the proximate result of "a disagreement with Colonel Barefoot or his friends" or that it was retaliation for his having filed a petition in Bankruptcy Court as alleged by Petitioner. In fact, the State Highway Patrol had previously issued Petitioner a written memorandum stating that Highway Patrol Policy does not prohibit the filing of a Bankruptcy Petition.

17. Petitioner testified that he borrowed money from these wrecker drivers because of his dire financial straits following personal bankruptcy. He denied any misuse of his position as a Trooper and stated that no favoritism was promised or received in exchange for the loans. He contends that the checks were given in lieu of promissory notes for loans he needed and intended to pay.

18. Highway Patrol personnel who knew Petitioner either through working with or supervising him testified that generally Petitioner was a good trooper who was very conscientious in the investigation of accidents. In fact, Petitioner's supervisor in April of 1992, Sergeant D.W. Thomas, gave Petitioner a favorable evaluation.

19. It was not until after June of 1992, when First Sergeant, now Lieutenant Taylor, became Petitioner's supervisor, that he received any reprimands, including written or oral warnings concerning his job performance. In fact, the only previous reprimands he received were concerning payments of debts which were connected with his financial instability during July and August of 1991.

20. Some of Petitioner's co-workers and superiors testified that during the time First Sergeant, now Lieutenant Taylor, was Petitioner's superior, First Sergeant Taylor showed hostility and animosity toward the Petitioner as a result of Petitioner questioning First Sergeant Taylor's comments that the troopers in the Raleigh area should have two contacts per hour, which Petitioner felt was in violation of North Carolina law and Highway Patrol policy.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Robert W. Beasley, Petitioner, was a career State employee at the time of his dismissal. Because he has alleged that Respondent lacked just cause for his dismissal, the Office of Administrative Hearings has jurisdiction to hear his appeal and issue a recommendation to the State Personnel Commission which shall make the final decision in the matter. G.S. 126-35, 126-37, 126-39, 150B-23, and 150B-36.

2. G.S. 126-35 provides, in part, "that no career State employee subject to the State Personnel Act shall be dismissed, except for just cause." Where just cause is an issue, Respondent bears the ultimate burden of persuasion. A just cause issue carries both substantive and procedural questions. Causes for dismissal fall into two categories: (1) causes relating to performance of duties, and (2) causes relating to personal conduct detrimental to state service. No prior warnings are required under (2).

3. Respondent has met its burden of showing just cause for terminating Petitioner's employment. Petitioner acted inappropriately by soliciting and accepting money and services from wrecker drivers called to accident scenes by the Highway Patrol. A professional law enforcement officer is under a duty to know better. An investigating officer must avoid even the appearance of impropriety. Requesting loans from wrecker drivers is poor judgement at the least and gives the appearance of extortion at the extreme. If he needed the money, family, close friends, or fellow troopers would have been more appropriate sources.

Based on the foregoing Findings of Fact and Conclusions, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

That the termination of Petitioner's employment be left undisturbed as being for just cause.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 10th day of August, 1995.

Fred G. Morrison Jr.
Senior Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE DEPARTMENT LICENSING BOARDS CHAPTER

1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
		Mortuary Science	34
*21	Occupational Licensing Boards	Nursing	36
22	Administrative Procedures	Nursing Home Administrators	37
23	Community Colleges	Occupational Therapists	38
24	Independent Agencies	Opticians	40
25	State Personnel	Optometry	42
26	Administrative Hearings	Osteopathic Examination & Reg. (Repealed)	44
27	NC State Bar	Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
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		Professional Counselors	53
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Note: Title 21 contains the chapters of the various occupational licensing boards.

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.0401 - .0402	10:02 NCR 150	07/01/95			08/01/95	
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.0701	10:07 NCR 585	10/01/95				
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2 NCAC 34 .0904	10:04 NCR 228	08/01/95			N/A	Renoticed in 10:7
.0904	10:07 NCR 430	11/01/95				
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21 NCAC 02 .0301 - .0302	10:10 NCR 829	07/01/96				
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08G .0401	10:04 NCR 255	08/01/95			08/01/95	
08J .0005	10:04 NCR 255	08/01/95			08/01/95	
.0008	10:04 NCR 255	08/01/95			08/01/95	
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	.0701 - .0710	10:07 NCR 430	05/01/96			
14V	.0101 - .0104	10:07 NCR 430	05/01/96			
	.0201 - .0208	10:07 NCR 430	05/01/96			
	.0301 - .0304	10:07 NCR 430	05/01/96			
	.0401 - .0405	10:07 NCR 430	05/01/96			
	.0501 - .0505	10:07 NCR 430	05/01/96			
	.0601 - .0604	10:07 NCR 430	05/01/96			
	.0701 - .0712	10:07 NCR 430	05/01/96			
	.0801 - .0805	10:07 NCR 430	05/01/96			
	.1101 - .1103	10:07 NCR 430	05/01/96			
	.1201 - .1203	10:07 NCR 430	05/01/96			
	.1301 - .1303	10:07 NCR 430	05/01/96			
	.1401 - .1403	10:07 NCR 430	05/01/96			
	.1501 - .1504	10:07 NCR 430	05/01/96			
	.2101 - .2104	10:07 NCR 430	05/01/96			
	.2201 - .2204	10:07 NCR 430	05/01/96			
	.2301 - .2306	10:07 NCR 430	05/01/96			
	.2401 - .2404	10:07 NCR 430	05/01/96			
	.2501 - .2505	10:07 NCR 430	05/01/96			
	.3101 - .3103	10:07 NCR 430	05/01/96			
	.3201 - .3203	10:07 NCR 430	05/01/96			
	.3301 - .3303	10:07 NCR 430	05/01/96			
	.3401 - .3403	10:07 NCR 430	05/01/96			
	.3501 - .3503	10:07 NCR 430	05/01/96			
	.3601 - .3604	10:07 NCR 430	05/01/96			
	.3701 - .3703	10:07 NCR 430	05/01/96			
	.3801 - .3803	10:07 NCR 430	05/01/96			
	.3901 - .3903	10:07 NCR 430	05/01/96			
	.4001 - .4003	10:07 NCR 430	05/01/96			
	.4101 - .4104	10:07 NCR 430	05/01/96			
	.5001 - .5002	10:07 NCR 430	05/01/96			
	.5101 - .5104	10:07 NCR 430	05/01/96			
	.5201 - .5204	10:07 NCR 430	05/01/96			
	.5301 - .5303	10:07 NCR 430	05/01/96			
	.5401 - .5403	10:07 NCR 430	05/01/96			
	.5501 - .5503	10:07 NCR 430	05/01/96			
	.5601 - .5603	10:07 NCR 430	05/01/96			
	.5701 - .5703	10:07 NCR 430	05/01/96			
	.5801 - .5804	10:07 NCR 430	05/01/96			
	.5901 - .5903	10:07 NCR 430	05/01/96			
	.6001 - .6003	10:07 NCR 430	05/01/96			
	.6101 - .6103	10:07 NCR 430	05/01/96			
	.6201 - .6202	10:07 NCR 430	05/01/96			
	.6301 - .6303	10:07 NCR 430	05/01/96			
	.6401 - .6403	10:07 NCR 430	05/01/96			
	.6501 - .6503	10:07 NCR 430	05/01/96			
	.6601 - .6603	10:07 NCR 430	05/01/96			
	.6701 - .6702	10:07 NCR 430	05/01/96			
	.6801 - .6802	10:07 NCR 430	05/01/96			
	.6901 - .6903	10:07 NCR 430	05/01/96			
18A	.0124 - .0128	10:07 NCR 430	05/01/96			
	.0130	10:07 NCR 430	05/01/96			
	.0132 - .0133	10:07 NCR 430	05/01/96			
	.0135 - .0136	10:07 NCR 430	05/01/96			

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18J .0110 - .0119	10:07 NCR 430	05/01/96				
.0212 - .0213	10:07 NCR 430	05/01/96				
.0304 - .0311	10:07 NCR 430	05/01/96				
.0507 - .0511	10:08 NCR 656	05/01/96				
.0601 - .0604	10:07 NCR 430	05/01/96				
.0701 - .0715	10:07 NCR 430	05/01/96				
.0801 - .0805	10:07 NCR 430	05/01/96				
.0803	10:02 NCR 118	07/01/95			07/01/95	
18K .0109 - .0116	10:07 NCR 430	05/01/96				
.0262 - .0263	10:08 NCR 656	05/01/96				
18L .0107 - .0108	10:07 NCR 430	05/01/96				
.0223 - .0224	10:07 NCR 430	05/01/96				
.0331 - .0336	10:07 NCR 430	05/01/96				
.0338 - .0339	10:07 NCR 430	05/01/96				
.0428 - .0434	10:07 NCR 430	05/01/96				
.0504	10:07 NCR 430	05/01/96				
.0511	10:07 NCR 430	05/01/96				
.0513	10:07 NCR 430	05/01/96				
.0601 - .0607	10:08 NCR 656	05/01/96				
.0701 - .0705	10:07 NCR 430	05/01/96				
.0707	10:07 NCR 430	05/01/96				
.0801	10:07 NCR 430	05/01/96				
.0803 - .0809	10:07 NCR 430	05/01/96				
.0901 - .0904	10:07 NCR 430	05/01/96				
.1001 - .1006	10:07 NCR 430	05/01/96				
.1101 - .1103	10:07 NCR 430	05/01/96				
.1105 - .1107	10:07 NCR 430	05/01/96				
.1201	10:07 NCR 430	05/01/96				
.1203 - .1206	10:07 NCR 430	05/01/96				
.1301 - .1309	10:07 NCR 430	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1501 - .1525	10:07 NCR 430	05/01/96				
18M .0107 - .0110	10:07 NCR 430	05/01/96				
.0206 - .0213	10:07 NCR 430	05/01/96				
.0304 - .0307	10:07 NCR 430	05/01/96				
.0406 - .0409	10:07 NCR 430	05/01/96				
.0505 - .0506	10:07 NCR 430	05/01/96				
.0607 - .0608	10:07 NCR 430	05/01/96				
.0701	10:07 NCR 430	05/01/96				
.0703 - .0706	10:07 NCR 430	05/01/96				
.0708 - .0714	10:07 NCR 430	05/01/96				
.0801 - .0803	10:07 NCR 430	05/01/96				
.0817 - .0819	10:07 NCR 430	05/01/96				
.0824 - .0838	10:07 NCR 430	05/01/96				
.0901 - .0908	10:07 NCR 430	05/01/96				
.1001 - .1009	10:07 NCR 430	05/01/96				
.1101 - .1106	10:07 NCR 430	05/01/96				
.1203 - .1204	10:07 NCR 430	05/01/96				
.1302 - .1305	10:07 NCR 430	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1405 - .1410	10:07 NCR 430	05/01/96				
18N .0105 - .0110	10:07 NCR 430	05/01/96				
.0204 - .0212	10:07 NCR 430	05/01/96				
.0305 - .0306	10:07 NCR 430	05/01/96				
.0601 - .0605	10:08 NCR 656	05/01/96				
.0701 - .0709	10:08 NCR 656	05/01/96				
18O .0517 - .0524	10:08 NCR 656	05/01/96				
18P .0901 - .0903	10:07 NCR 430	05/01/96				
.1001 - .1004	10:07 NCR 430	05/01/96				
18Q .0284	10:07 NCR 430	05/01/96				
.0286 - .0287	10:07 NCR 430	05/01/96				
.0520 - .0521	10:07 NCR 430	05/01/96				

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26B .0110	10:08 NCR 660	10/01/95				
.0124	10:02 NCR 118	07/01/95	x		07/01/95	
26H .0302	10:04 NCR 228	08/01/95	x		08/01/95	
.0304 - .0305	10:04 NCR 228	08/01/95	x		08/01/95	
.0308 - .0309	10:04 NCR 228	08/01/95	x		08/01/95	
26H .0213	10:02 NCR 118	07/01/95			07/01/95	
26I .0101 - .0107	10:10 NCR 826	11/01/95				
39D .0302 - .0303	10:09 NCR 722	11/01/95				
41F .0706	10:03 NCR 196	08/01/95			08/01/95	
.0812	10:03 NCR 196	08/01/95			08/01/95	
42H .0911	10:09 NCR 722	12/01/95				
42W .0001 - .0002	10:10 NCR 828	11/01/95				
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11 NCAC 06A .0812	10:04 NCR 246	08/01/95			08/01/95	
16 .0704	10:11 NCR 900	12/01/95				
JUSTICE						
12 NCAC 04E .0104	10:07 NCR 573	10/01/95				
07D .0201	10:07 NCR 575	10/01/95				
.0204	10:11 NCR 900	12/01/95				
.0301	10:07 NCR 575	10/01/95				
.0401	10:07 NCR 575	10/01/95				
.0701	10:07 NCR 575	10/01/95				
.0706	10:07 NCR 575	10/01/95				
.0801	10:07 NCR 575	10/01/95				
.0806	10:07 NCR 575	10/01/95				
.0902	10:07 NCR 575	10/01/95				
.0904	10:07 NCR 575	10/01/95				
09A .0204	10:02 NCR 122	08/01/95			08/01/95	
09B .0113	10:02 NCR 122	08/01/95			08/01/95	
.0201 - .0202	10:02 NCR 122	08/01/95			01/01/96	
.0205	10:02 NCR 122	08/01/95				
.0206	10:02 NCR 122	08/01/95			08/01/95	
.0210	10:02 NCR 122	08/01/95			08/01/95	
.0212 - .0214	10:02 NCR 122	08/01/95			08/01/95	
.0226 - .0228	10:02 NCR 122	08/01/95			08/01/95	
.0232 - .0233	10:02 NCR 122	08/01/95			08/01/95	
09C .0401	10:02 NCR 122	08/01/95			08/01/95	
.0601	10:02 NCR 122	08/01/95			08/01/95	
09D .0102	10:02 NCR 122	08/01/95			08/01/95	
.0104 - .0106	10:02 NCR 122	08/01/95			08/01/95	
10B .0102 - .0103	10:09 NCR 723	01/01/96				
.0105	10:09 NCR 723	01/01/96				
.0204	10:09 NCR 723	01/01/96				
.0301	10:09 NCR 723	01/01/96				
.0304	10:09 NCR 723	01/01/96				
.0307	10:09 NCR 723	01/01/96				
.0401 - .0403	10:09 NCR 723	01/01/96				
.0405	10:09 NCR 723	01/01/96				
.0407 - .0409	10:09 NCR 723	01/01/96				
.0502 - .0503	10:09 NCR 723	01/01/96				
.0505	10:09 NCR 723	01/01/96				
.0601 - .0607	10:09 NCR 723	01/01/96				
.0702 - .0706	10:09 NCR 723	01/01/96				
.0801 - .0803	10:09 NCR 723	01/01/96				
.0901	10:09 NCR 723	01/01/96				
.0903 - .0906	10:09 NCR 723	01/01/96				
.0908 - .0912	10:09 NCR 723	01/01/96				
.1004 - .1005	10:09 NCR 723	01/01/96				
.1201 - .1205	10:09 NCR 723	01/01/96				
11 .0210	10:05 NCR 301	09/01/95				

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			State	Local		
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	10:01 NCR 12	01/01/96				Notice on Subject Matter
	10:02 NCR 149	10/01/95				Notice on Subject Matter
	10:02 NCR 149	01/01/96				Notice on Subject Matter
	10:02 NCR 149	01/01/96				Notice on Subject Matter
	10:02 NCR 149	02/01/96				Notice on Subject Matter
	10:03 NCR 196	01/01/96				Notice on Subject Matter
	10:03 NCR 197	01/01/96				Notice on Subject Matter
	10:02 NCR 142	08/01/95				
	10:02 NCR 142	08/01/95				
12 .0101	10:02 NCR 142	08/01/95				
	.0303 - .0315	10:02 NCR 142	08/01/95			
	.0501 - .0502	10:02 NCR 142	08/01/95			
	.0803 - .0808	10:02 NCR 142	08/01/95			
LIST OF RULES CODIFIED						
	10:02 NCR 167					Rules Filed 03/95
	10:04 NCR 272					Rules Filed 04/95
	10:06 NCR 392					Rules Filed 05/95
	10:09 NCR 783					Rules Filed 06/95
	10:10 NCR 845					Rules Filed 07/95
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21 NCAC 32B .0901 - .0902	10:10 NCR 831	11/01/95				
	10:10 NCR 831	11/01/95				
	10:02 NCR 151	07/01/96			07/01/96	
	10:02 NCR 151	07/01/96			07/01/96	
	10:02 NCR 151	07/01/96				
	10:02 NCR 151	07/01/96			07/01/96	
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	10:02 NCR 151	07/01/95			09/01/95	
	10:02 NCR 151	07/01/96			07/01/96	
	10:02 NCR 151	07/01/96			07/01/96	
	10:02 NCR 151	07/01/96			07/01/96	
	10:02 NCR 151	07/01/96			07/01/96	
	10:02 NCR 151	07/01/95			09/01/95	
	10:02 NCR 151	07/01/96			07/01/96	
	10:02 NCR 151	07/01/96			07/01/96	
	10:02 NCR 151	07/01/95			09/01/95	
	10:10 NCR 831	11/01/95				
	NURSING, BOARD OF					
21 NCAC 36	10:11 NCR 908	01/01/96				
	10:11 NCR 908	01/01/96				
	10:11 NCR 908	01/01/96				
	10:11 NCR 908	01/01/96				
	10:11 NCR 908	01/01/96				
	10:11 NCR 908	01/01/96				
	10:11 NCR 908	01/01/96				
	10:11 NCR 908	01/01/96				
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	10:11 NCR 908	01/01/96				
	10:11 NCR 908	01/01/96				
	10:10 NCR 839	12/01/95				
NURSING HOME ADMINISTRATORS						
21 NCAC 37	10:04 NCR 262	08/01/95			08/01/95	
	10:03 NCR 206	08/01/95				
	10:03 NCR 206	08/01/95				
	10:03 NCR 206	08/01/95			08/01/95	
	10:03 NCR 206	08/01/95			08/01/95	
	10:04 NCR 262	08/01/95				
	10:03 NCR 206	08/01/95			08/01/95	
	10:03 NCR 206	08/01/95				
	10:03 NCR 206	08/01/95				
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21 NCAC 48C	10:08 NCR 671	10/01/95				
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.0008	10:08 NCR 671	10/01/95				
.0011	10:08 NCR 671	10/01/95				
48E .0110	10:08 NCR 671	10/01/95				
48F .0002	10:08 NCR 671	10/01/95				
48G .0501 - .0516	10:08 NCR 671	10/01/95				
.0601	10:08 NCR 671	10/01/95				
48H .0104	10:08 NCR 671	10/01/95				
.0701 - .0704	10:08 NCR 671	10/01/95				
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21 NCAC 50 .0402	10:01 NCR 39	09/01/95			09/01/95	
.0505	10:01 NCR 39	09/01/95				Agency Did Not Adopt
PROFESSIONAL COUNSELORS						
21 NCAC 53 .0204 - .0211	10:01 NCR 40	07/01/95			07/01/95	
.0301	10:01 NCR 40	07/01/95			07/01/95	
.0305 - .0309	10:01 NCR 40	07/01/95			07/01/95	
.0310	10:01 NCR 40	07/01/95				
.0403 - .0405	10:01 NCR 40	07/01/95			07/01/95	
.0601 - .0604	10:01 NCR 40	07/01/95			07/01/95	
PROFESSIONAL ENGINEERS AND LAND SURVEYORS						
21 NCAC 56 .0802	10:11 NCR 934	12/01/95				
.0804	10:11 NCR 934	12/01/95				
.0902	10:11 NCR 934	12/01/95				
.1103	10:11 NCR 934	12/01/95				
.1301	10:11 NCR 934	12/01/95				
.1602	10:11 NCR 934	12/01/95				
.1604	10:11 NCR 934	12/01/95				
.1608	10:11 NCR 934	12/01/95				
.1707	10:11 NCR 934	12/01/95				
.1712 - .1713	10:11 NCR 934	12/01/95				
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21 NCAC 54 .1701	10:11 NCR 929	12/01/95				
.1707	10:11 NCR 929	12/01/95				
.2704 - .2706	10:11 NCR 929	12/01/95				
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16 NCAC 06D .0106	10:07 NCR 584	11/01/95				
REAL ESTATE COMMISSION						
21 NCAC 58A .0110	10:02 NCR 157	07/01/95			07/01/95	
.0403	10:04 NCR 263	08/01/95			08/01/95	
.0503	10:04 NCR 263	08/01/95			08/01/95	
.0504 - .0506	10:02 NCR 157	07/01/95			07/01/95	
.0505	10:04 NCR 263	08/01/95			08/01/95	
.1703	10:02 NCR 157	07/01/95			07/01/95	
.1707 - .1708	10:02 NCR 157	07/01/95			07/01/95	
.1710 - .1711	10:02 NCR 157	07/01/95			07/01/95	
58E .0103	10:02 NCR 157	07/01/95			07/01/95	
.0203 - .0204	10:02 NCR 157	07/01/95			07/01/95	
.0303 - .0305	10:02 NCR 157	07/01/95			07/01/95	
.0406 - .0407	10:02 NCR 157	07/01/95			07/01/95	
.0506	10:02 NCR 157	07/01/95			07/01/95	
.0515	10:02 NCR 157	07/01/95			07/01/95	
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21 NCAC 60 .0102	10:04 NCR 264	08/01/95			08/01/95	
.0105	10:09 NCR 781	11/01/95				
.0204	10:04 NCR 264	08/01/95			08/01/95	
.0314	10:04 NCR 264	08/01/95			08/01/95	

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.1103	10:09 NCR 781	11/01/95				
REVENUE						
Tax Review Board	10:01 NCR 03					
Tax Review Board	10:07 NCR 428					
Tax Review Board	10:09 NCR 716					
Tax Review Board	10:11 NCR 890					
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18 NCAC 06 .1205 - .1206	10:05 NCR 306	09/01/95				
.1208	10:05 NCR 306	09/01/95				
.1302 - .1305	10:05 NCR 306	09/01/95				
.1313	10:05 NCR 306	09/01/95				
.1402	10:11 NCR 906	12/01/95				
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25 NCAC 01C .0207	10:04 NCR 264	08/01/95				
.0402 - .0408	10:04 NCR 264	08/01/95				
01D .0201	10:04 NCR 264	08/01/95				
.0205	10:04 NCR 264	08/01/95				
.0207	10:04 NCR 264	08/01/95				
.0211	10:04 NCR 264	08/01/95				
.0509	10:07 NCR 588	10/01/95				
.0808	10:04 NCR 264	08/01/95				
.1001	10:04 NCR 264	08/01/95				
.1009	10:04 NCR 264	08/01/95				
.1201	10:04 NCR 264	08/01/95				
.1204	10:04 NCR 264	08/01/95				
.1401	10:04 NCR 264	08/01/95				
.1801 - .1802	10:04 NCR 264	08/01/95				
.2001	10:04 NCR 264	08/01/95			08/08/95	
01E .0804	10:04 NCR 264	08/01/95				
.1402 - .1409	10:07 NCR 588	10/01/95				
.1410 - .1411	10:07 NCR 588	10/01/95				
01J .0604 - .0606	10:07 NCR 588	10/01/95				
.0608	10:07 NCR 588	10/01/95				
.0610 - .0612	10:07 NCR 588	10/01/95				
.0613 - .0615	10:07 NCR 588	10/01/95				
01K .0312	10:04 NCR 264	08/01/95				
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19A NCAC 02D .0801	10:04 NCR 254	09/01/95				
04A .0004	10:10 NCR 829	12/01/95				

BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Title 1 - Dept. of Administration - Full Title	201 00 00	\$63.00	\$90.00
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
Title 2 - Dept. of Agriculture - Full Title	202 00 00	\$98.00	\$140.00
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
Title 3 - Dept. of State Auditor - Full Title	203 00 00	\$7.00	\$10.00
Title 4 - Dept. of Commerce - Full Title	204 00 00	\$87.50	\$125.00
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 06	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
Title 5 - Dept. of Corrections - Full Title	205 00 00	\$56.00	\$80.00
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